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FOREWORD

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

Chapters I and II contain legislative texts and treaties, or provisions thereof, concerning the legal status of the United Nations and related intergovernmental organizations.

Chapter III contains a general review of the legal activities of the United Nations and related intergovernmental organizations, based on information provided by each organization.

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 in view of the sometimes considerable time lag between the conclusion of treaties and 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 2011.

Chapter VIII contains decisions given in 2011 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.

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

AMISOM	African Union Mission in Somalia
AU	African Union
BINUCA	United Nations Integrated Peacebuilding Office in the Central African Republic
BNUB	United Nations Office in Burundi
CAEMC	Central African Economic and Monetary Community
CCPCJ	Commission on Crime Prevention and Criminal Justice (ECOSOC)
CEPGL	Economic Community of the Great Lakes Countries
CLCS	Commission on the Limits of the Continental Shelf
CMI	Comité Maritime International
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization
CTC	Counter-Terrorism Committee (Security Council)
DESA	Department of Economic and Social Affairs (United Nations)
DFS	Department of Field Support (United Nations)
DPA	Department of Political Affairs (United Nations)
DPI	Department of Public Information (United Nations)
DPKO	Department of Peacekeeping Operations (United Nations)
EBRD	European Bank for Reconstruction and Development
EC	European Community
ECCAS	Economic Community of Central African States
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECOSOC	Economic and Social Council
EU	European Union
EUFOR	European Union-led peacekeeping force
FAO	Food and Agriculture Organization of the United Nations
HRC	Human Rights Council (United Nations)
IAEA	International Atomic Energy Agency
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
IFAD	International Fund for Agricultural Development
IGO	Intergovernmental organization
ILC	International Law Commission

ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
ISA	International Seabed Authority
ISAF	International Security Assistance Force
ITLOS	International Tribunal for the Law of the Sea
JAB	Joint Appeals Board (United Nations)
LDC	Least Developed Country
MINURCAT	United Nations Mission in the Central African Republic and Chad
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSTAH	United Nations Stabilization Mission in Haiti
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights (United Nations)
OIOS	Office of Internal Oversight Services (United Nations)
OLA	Office of Legal Affairs (United Nations)
OPCW	Organisation for the Prohibition of Chemical Weapons
SCSL	Special Court for Sierra Leone
SOFA	Status-of-forces agreement
SRSG	Special Representative of the Secretary-General (United Nations)
STL	Special Tribunal for Lebanon
UEMOA	West African Economic and Monetary Union
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
UNCTAD	United Nations Conference on Trade and Development
UNDC	United Nations Disarmament Commission
UNDOF	United Nations Disengagement Observer Force
UNDP	United Nations Development Programme
UNDT	United Nations Dispute Tribunal
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFICYP	United Nations Peacekeeping Force in Cyprus

UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNIOGBIS	United Nations Integrated Peace-Building 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
UNISFA	United Nations Interim Security Force for Abyei
UNITAR	United Nations Institute for Training and Research
UNJSPF	United Nations Joint Staff Pension Fund
UN-LiREC	United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMIN	United Nations Political Mission in Nepal
UNMIS	United Nations Mission in the Sudan
UNMISS	United Nations Mission in the Republic of South 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
UNOV	United Nations Office at Vienna
UNOWA	United Nations Office for West Africa
UNPOS	United Nations Political Office for Somalia
UNRCCA	United Nations Regional Centre for Preventive Diplomacy for Central Asia
UNRCPD	United Nations Regional Centre for Peace, Disarmament and Development in Asia and the Pacific
UNREC	United Nations Regional Centre for Peace and Disarmament in Africa
UNSAC	United Nations Standing Advisory Committee on Security Questions in Central Africa
UNSCO	United Nations Special Coordinator for the Middle East Peace Process
UNSMIL	United Nations Support Mission in Libya

UNSOA	United Nations Support Office for African Union Mission in Somalia
UNTSO	United Nations Truce Supervision Organization
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNWTO	United Nations World Tourism Organization
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

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

[No legislative texts concerning the legal status of the United Nations and related intergovernmental organizations are to be reported for 2011.]

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 2011. As at 31 December 2011, there were 158 States parties to the Convention.**

2. Agreements relating to missions, offices and meetings

(*a*) Agreement between the Republic of Austria and the International Bank for Reconstruction and Development, the International Finance Corporation and the Multilateral Investment Guarantee Agency regarding the establishment of liaison offices in Vienna. Washington, 21 July 2010.***

Preamble

The Republic of Austria, on the one side, and the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) (together, hereinafter referred to as the "Organizations"), on the other side;

Having regard to

(i) the Articles of Agreement of the International Bank for Reconstruction and Development of 27 December 1945, as amended with effect of 16 February 1989, which include Article VII on IBRD's status, immunities and privileges;

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

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

*** Entered into force on 1 February 2011 in accordance with article 22.

(ii) the Articles of Agreement of the International Finance Corporation of 25 May 1955, as amended with effect of 28 April 1993, which include Article VI on IFC's status, immunities and privileges; and

(iii) the Convention establishing the Multilateral Investment Guarantee Agency of 11 October 1985, which includes Chapter VII on MIGA's privileges and immunities (together, hereinafter referred to as "instruments establishing the Organizations");

Having regard to the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947,[*] to which the Republic of Austria became a party as of 21 July 1950 with respect to Annex VI concerning the IBRD,[**] as of 10 November 1959, with respect to Annex XIII concerning the IFC;[***] and also to the MIGA Convention[****] which was ratified by the Republic of Austria on September 17, 1997;

Noting that the Organizations have established or may establish a liaison office or offices in Vienna;

Desiring to define the status, privileges and immunities of such liaison office or offices in the Republic of Austria and to enable the liaison office or offices to fulfill its purposes and functions;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(*a*) "Austrian authorities" means such federal, state, municipal or other authorities in the Republic of Austria as may be appropriate in the context, and in accordance with the laws and customs applicable in the Republic of Austria;

(*b*) "organizations" means the International Bank for Reconstruction and Development, the International Finance Corporation and the Multilateral Investment Guarantee Agency;

(*c*) "office" means the liaison office or offices of the Organizations in the Republic of Austria;

(*d*) "resident Representative" means the head of the Office for each of the Organizations;

(*e*) "staff Members of the Office" means all staff members of the Office except those who are both locally recruited and assigned to hourly rates;

(*f*) "officials of the Office" means all Staff Members of the Office including all persons serving with a Government or an international organization and seconded to work at the Office;

(*g*) "official activities" means any activities necessary for carrying out the purpose of the Organizations as set forth in the instruments establishing the Organizations; and

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

[**] *Ibid*., vol. 33, p. 300.

[***] *Ibid*., vol. 327, p. 326.

[****] *Ibid*., vol. 1508, p. 100.

(*h*) "official visitors" means representatives of Governments and international organizations co-operating with the Organizations as well as other participants in meetings of the Organizations, invited by the Office.

Article 2. Legal Personality

The Republic of Austria recognizes the international juridical personality of the Organizations, deriving from the instruments establishing the Organizations, and their legal capacity within Austria, in particular their capacity:

(*a*) to contract;

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

(*c*) to institute and respond to legal proceedings; and

(*d*) to take such other action as may be necessary or useful for their purpose and activities.

Article 3. Seat

(1) The seat of the Office shall comprise the land, installations and offices that the Office occupies for its activities. Its area shall be defined by common understanding between the Organizations and the Government of the Republic of Austria.

(2) Any building in or outside Vienna used with the agreement of the Government for meetings convened by the Office shall be deemed temporarily to form part of the seat precinct.

Article 4. Inviolability of the Seat

(1) The seat of the Office shall be inviolable. No officer or official of the Republic of Austria, or other person exercising any public authority within the Republic of Austria, may enter the seat to perform any duties except with the consent of, and under conditions approved by, the Resident Representative. However, in the event of fire or other such emergency, such consent shall be deemed to have been given if immediate protective measures are required.

(2) Except as otherwise provided in this Agreement and subject to the right of the Organizations to make regulations including employment rules and policies governing Officials of the Organizations, the laws of the Republic of Austria shall apply within the seat.

(3) Legal instruments issued by Austrian authorities may be served upon each of the Organizations through their respective representatives at the seat premises.

Article 5. Immunity from Jurisdiction and Other Actions

(1) The Organizations shall have immunity from jurisdiction and enforcement, except:

(*a*) to the extent that the Organizations shall have expressly waived such immunity in a particular case; and

(*b*) in cases arising out of or in connection with the exercise of their powers to issue or guarantee securities on the territory of the Republic of Austria.

(2) Without prejudice to paragraphs (1) and (3), the property and assets of the Organizations, wherever situated, shall be immune from any form of seizure, confiscation, expropriation and sequestration.

(3) The property and assets of the Organizations shall also be immune from any form of administrative or provisional judicial restraint.

Article 6. Inviolability of Archives

The archives of the Organizations shall be inviolable.

Article 7. Protection of the Seat Premises

The Austrian authorities shall exercise due diligence to ensure that the tranquillity of the seat is not disturbed by any person or group of persons attempting unauthorized entry into the seat.

Article 8. Public Services in the Seat Premises

The Republic of Austria shall take all appropriate measures to ensure that the seat is supplied with the necessary public services on equitable terms.

Article 9. Communications

(1) The Republic of Austria shall ensure that the Organizations are able to send and receive communications in connection with their official activities without censorship or other interference.

(2) The Organizations shall enjoy in the Republic of Austria, for their official communications and the transfer of all their documents, treatment not less advantageous to the Organizations than the most favourable treatment accorded by the Republic of Austria to any international organization, in the matter of priorities, rates and surcharges on mail, cables, radiogrammes, telefax, telephone and other forms of communication.

(3) The Organizations shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags. If the Organizations so request, the Republic of Austria will, at no cost to the Organizations, provide the necessary permits, licenses or other authorizations to enable the Office to connect to, and to utilize fully, the World Bank Group's private telecommunications network.

Article 10. Freedom from Taxation and Customs Duties

(1) The Organizations and their property shall be exempt from all forms of taxation.

(2) Indirect taxes included in the price of goods or services supplied to the Organizations since 1 August 2007, including leasing and rental charges, shall be refunded to the Organizations insofar as Austrian law makes provision to that effect for foreign diplomatic missions.

(3) All transactions to which one of the Organizations is a party and all documents recording such transactions shall be exempt from all taxes, recording charges and court fees.

(4) Goods, including motor vehicles and spare parts thereof, imported or exported by the Organizations, required for their official activities, shall be exempt from customs duties and other charges provided these are not simply charges for public utility services, and from economic prohibitions and restrictions on imports and exports. The Republic of Austria shall issue for each vehicle of the Office a diplomatic license plate by which it can be identified as an official vehicle of an international organization.

(5) Goods imported in accordance with paragraph (4) shall not be ceded or transferred by the Organizations to third parties in the Republic of Austria within two years of their importation or acquisition.

(6) The Organizations shall be exempt from the obligation to pay employer's contributions to the Family Burden Equalization Fund or an instrument with equivalent objectives.

Article 11. Financial Facilities

(1) The Republic of Austria shall take all measures to ensure that the Organizations may:

(*a*) purchase and receive through authorized channels, hold and dispose of any currencies or securities;

(*b*) open and operate bank accounts in any currency; and

(*c*) transfer their funds, securities and currencies to, from or within the Republic of Austria.

(2) The Organizations may purchase, in exchange for any convertible currency, the national currency of the Republic of Austria in such amounts as the Organizations may from time to time require for meeting their expenditures in the Republic of Austria, at the official exchange rate no less favourable than that accorded to other international organizations or diplomatic missions in the Republic of Austria. The Organizations may use the local currency portion, if any, of the Republic of Austria's paid-in capital subscriptions to assist them in defraying the local expenses of the Office.

(3) In the application of the provisions of paragraph (1) and (2), the Organizations take note of Austria's obligations under the Charter of the United Nations to carry out Security Council decisions and shall, in the conduct of their activities, have due regard for Security Council decisions under Articles 41 and 42 of the Charter of the United Nations.

Article 12. Social Security

(1) The Organizations and the officials of the Office shall be exempt from all compulsory contributions to any social security scheme of the Republic of Austria.

(2) The staff members of the Office shall have the right to participate in any branch of the social insurance of the Republic of Austria (health, accident and pension insurance) as well as in the unemployment insurance. This insurance shall have the same legal effect as a compulsory insurance.

(3) The staff members of the Office may avail themselves of the right under paragraph (2) by submitting a written declaration within three months after entry into force of this Agreement or within three months after taking up their appointment with the Office.

(4) The declarations required to be made by the staff member of the Office under paragraph (3) shall be transmitted by the Office on behalf of the staff member of the Organizations to the Wiener Gebietskrankenkasse. The Office shall upon request provide the Wiener Gebietskrankenkasse with the information necessary for the implementation of the insurance.

(5) Insurance under paragraph (2) in the selected branch shall take effect with the date of taking up the appointment with the Office, provided the declaration is submitted within seven days after entry into force of this provision in accordance with Article 23 paragraph (2) or after the date of taking up the appointment, otherwise on the day following the day of submission of the declaration.

(6) Insurance under paragraph (2) shall cease on the date on which the appointment with the Office terminates.

(7) Throughout the duration of the insurance under paragraph 2, staff members of the Office shall be responsible for the payment of the entire contributions to the Wiener Gebietskrankenkasse.

Article 13. Transit and Residence

(1) The Republic of Austria shall take all necessary measures to facilitate the entry into, and sojourn in, the Republic of Austria of the persons listed below, shall allow them to leave the Republic of Austria without interference and shall ensure that they can travel unimpeded to or from the seat, affording them any necessary protection when so travelling:

(*a*) the Resident Representative and members of their family forming part of their household;

(*b*) officials of the Office and members of their families forming part of their household; and

(*c*) official visitors.

(2) Visas which may be required by persons referred to in paragraph (1) shall be granted free of charge and as promptly as possible.

(3) No activity performed by any person referred to in paragraph (1) in their official capacity with respect to the Organizations shall constitute a reason for preventing or restricting their entry into, or their departure from, the Republic of Austria.

(4) The Republic of Austria shall be entitled to require reasonable evidence to establish that persons claiming the rights granted by this Article fall within the categories described in paragraph (1), and to require compliance in a reasonable manner with quarantine and health regulations.

Article 14. Officials of the Office

(1) Officials of the Office shall enjoy, within and with respect to the Republic of Austria, the following privileges and immunities:

(*a*) immunity from jurisdiction in respect of words spoken or written and all acts performed by them in their official capacity; this immunity shall continue to apply even after the persons concerned have ceased to be officials of the Office;

(*b*) immunity from the seizure of their personal and official baggage and immunity from inspection of official baggage, and, if the persons come within the scope of Article 15 and are neither Austrian citizens nor have their permanent residence in the Republic of Austria, immunity from inspection of personal baggage;

(*c*) inviolability of all official documents, data and other material;

(*d*) exemption from taxation in respect of the salaries, emoluments including allowances, remunerations, indemnities and pensions paid to them by the Organizations in connection with their service with it. This exemption shall extend also to assistance given to the families of officials of the Organizations;

(*e*) exemption from any form of taxation on income derived by them and by members of their families forming part of their household from sources outside the Republic of Austria;

(*f*) exemption from inheritance and gift taxes, except with respect to immovable property located in the Republic of Austria, insofar as the obligation to pay such taxes arise solely from the fact that officials of the Organizations or members of their families forming part of their household reside or maintain their usual domicile in the Republic of Austria;

(*g*) exemption from immigration restrictions and from registration formalities for themselves and members of their families forming part of their household;

(*h*) freedom to acquire or maintain within the Republic of Austria foreign securities, deposit and payment accounts in any currency, other movable property and, under the same conditions as Austrian nationals, immovable property, and upon termination of their employment with the Organizations, the right to transfer out of the Republic of Austria, without interference, their funds; these provisions shall not apply to amounts which are subject to the Austrian regulations concerning blocked accounts;

(*i*) the right to import for personal use, free of duty and other charges, provided these are not simply charges for public utility services, and exempt from economic import prohibitions and restrictions on imports and exports:

(i) their furniture and effects in one or more separate consignments; and

(ii) one motor vehicle every four years;

(*j*) the same protection and repatriation facilities with respect to themselves and members of their families forming part of their household as are accorded in time of international crises to members, having comparable rank, of the staffs of diplomatic missions accredited to the Republic of Austria;

(*k*) the opportunity for their spouses and dependent relatives living in the same household to have access to the labour market in accordance with the Austrian law on a preferential basis, provided that, insofar as they engage in gainful occupation, privileges and immunities under this Agreement shall not apply with regard to such occupation. This privilege shall be granted according to the Annex.

(2) Officials of the Office, and the members of their families living in the same household, to whom this agreement applies, shall not be entitled to payments out of the

Family Burden Equalization Fund or an instrument with equivalent objectives. This exclusion from coverage shall not apply if these persons are Austrian nationals, persons of other nationality granted equivalent status by European Union legislation, or stateless persons with permanent residence in Austria.

Article 15. The Resident Representative

In addition to the privileges and immunities specified in Article 14, the Resident Representative as well as any senior member of the Officials of the Office acting on behalf of the Resident Representative during their absence from duty shall be accorded the privileges and immunities, exemptions and facilities accorded to heads of diplomatic missions or members of such missions having comparable rank, provided they are not Austrian nationals or are not permanent residents of the Republic of Austria.

Article 16. Official Visitors

(1) Official visitors shall enjoy the following privileges and immunities:

(*a*) immunity from jurisdiction in respect of all words spoken or written, and all acts performed by them in the exercise of their duties. Official visitors shall continue to enjoy this immunity even after they have ceased to be official visitors of the Office;

(*b*) inviolability of all their official documents, data and other material;

(*c*) immunity from seizure of their personal and official baggage;

(*d*) the exchange facilities necessary for the transfer of their emoluments and expenses.

(2) Where the incidence of any form of taxation depends upon residence, periods during which the persons referred to in paragraph 1 may be present in the Republic of Austria for the discharge of their duties shall not be considered as periods of residence. In particular, such persons shall be exempt from taxation on their emoluments and expenses paid by the Organizations during such periods of duty.

Article 17. Notification of appointments, Identity Cards

(1) The Office shall communicate to the Austrian authorities a list of the officials of the Office and shall revise such list from time to time as may be necessary.

(2) The Republic of Austria shall in accordance with Austrian law issue to officials of the Office and members of their families forming part of their household an identity card bearing the photograph of the holder. This card shall serve to identify the holder vis-à-vis the Austrian authorities.

Article 18. Austrian Nationals and Permanent Residents of the Republic of Austria

Austrian nationals and persons who are permanent residents of the Republic of Austria, shall enjoy only the privileges and immunities specified in Article 12, Article 14 (1) (a), (b) with the reservations provided for therein, (c), and (d), and Article 16(1) (a), (b), and (c).

Article 19. Purpose of Privileges and Immunities

(1) The privileges and immunities provided for in this Agreement are not designed to give to officials or official visitors of the Office personal advantage. They are granted solely to ensure that the Organizations are able to perform their official activities unimpeded at all times and that the persons to whom they are accorded have complete independence.

(2) The Organizations shall waive immunity where they consider that such immunity would impede the normal course of justice and that it can be waived without prejudicing the interests of the Organizations.

(3) In all cases, the Organizations engage to encourage their staff members to comply with their legal obligations.

Article 20. Settlement of Disputes

(1) Any dispute, controversy or claim between the Republic of Austria and the Organizations arising out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination, which is not settled by negotiation or other agreed mode of settlement, shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, as in effect on the date of this Agreement, and the additional provisions of this Article 20.

(2) The number of arbitrators shall be three: one to be chosen by the Organizations, one to be chosen by the Federal Minister for European and International Affairs of the Republic of Austria, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months of their appointment, they shall be chosen by the President of the International Court of Justice at the request of the Republic of Austria or the Organizations.

(3) The language to be used in the arbitral proceedings shall be English.

Article 21. Most-Favoured Organization

If and to the extent that the Government of the Republic of Austria shall enter into any agreement with a comparable intergovernmental organization having a seat in Austria containing terms or conditions more favourable to that organization than similar terms or conditions of this Agreement, the Government shall extend such more favourable terms or conditions to the Organizations, by means of a supplemental agreement.

Article 22. Entry into Force and Duration of the Agreement

(1) This Agreement shall enter into force between the Republic of Austria and each of the Organizations on the first day of the second month after the Republic of Austria and the respective Organization have informed each other of the completion of the procedures required, for each of them, to be bound by it.

(2) This Agreement shall cease to be in force:

(*a*) by mutual agreement of the Republic of Austria and the Organizations;

(*b*) between the Republic of Austria and one of the Organizations upon the expiration of six months following written notice of termination from either party to the other;

this does not affect the remaining in force of the agreement between the Republic of Austria and the other Organizations; or

(*c*) upon the termination of the activities of the Office in Austria for any one of the Organizations; this does not affect the remaining in force of the agreement between the Republic of Austria and the other Organizations.

Article 23. Construction

This Agreement is entered into in furtherance of the instruments establishing the Organizations, and the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947, to which the Republic of Austria became a party as of 21 July 1950 with respect to Annex VI concerning the IBRD, and as of 10 November 1959, with respect to Annex XIII concerning the IFC; and also to the MIGA Convention which was ratified by the Republic of Austria on September 17, 1997. Accordingly, this Agreement shall not be construed to revoke or restrict the terms of such instruments or Conventions in any way, including with respect to the status of the Organizations established by thereby, or the privileges and immunities provided thereby.

Done in Washington, on 21st July 2010 in the German and English languages, each text being equally authentic.

For the Republic of Austria:

Christian Prosl

For the International Bank for Reconstruction and Development:

Philippe Le Houerou

For the International Finance Corporation:

Imoni Akpofure

For the Multilateral Investment Guarantee Agency:

Izumi Kobayashi

ANNEX

Access to the labour market

1. Spouses of officials of the Office and their children under age of 21, provided they came to Austria for the purpose of family reunion and forming part of the same household with the principal holder of the identity card issued according to Article 17, shall have preferential access to the labour market. For the purpose of access to the labour market, the definition "Official of the Office" contained in Article 1 (f) takes account of the specific structure of the Office. The above mentioned family members are hereinafter called beneficiaries.

2. Upon application, the above mentioned beneficiaries will be issued, by the Federal Ministry for European and International Affairs, a certificate confirming their preferential status under this Agreement. The issuing of such certificate shall not be conditional on a specific offer of employment. It shall be valid for the entire Austrian territory and its validity shall expire upon expiration of the identity card.

3. The prospective employer of the beneficiary will be granted an employment permit ("Beschäftigungsbewilligung") upon application, provided that the employment is not sought in a sector of the labour market or a region with grave employment problems, as determined by the Austrian Public Employment Service ("Arbeitsmarktservice"). The employment permit may be granted even if the legally fixed maximum number for employment of foreign labour ("Bundeshöchstzahl") has been exceeded.

4. The employment permit shall be issued by the regional office of the Austrian Public Employment Service ("Arbeitsmarktservice") competent for the area in which employment is taken up; in the case of employment which is not confined to a specific location, the competence of the regional office shall be determined by the business seat of the employer.

5. Children who came to Austria before the age of 21 for the purpose of family reunion and who wish to take up employment after the completion of their 21st year of age shall be considered as beneficiaries if the principal holder of the identity card provided for their livelihood before they reached the age of 21 up to the moment in which they took up employment. For all other dependent relatives the normal regulations for access of foreigners to employment in Austria shall apply.

6. The above rules concerning employment shall not apply to self-employed activities. In such cases, the beneficiaries shall comply with the necessary legal requirements for the exercise of such business activities.

(*b*) Agreement between the Government of the Republic of Korea and the United Nations regarding the establishment of the United Nations Office for Sustainable Development. Cancún, 8 August 2010*

Whereas the Government of the Republic of Korea (hereinafter referred to as the "Government") and the United Nations (hereinafter jointly referred to as the "Parties") have agreed to cooperate in the implementation of a program of activities in support of sustainable development;

Whereas Agenda 21, the Programme for the Further Implementation of Agenda 21, the Johannesburg Plan of Implementation adopted at the World Summit on Sustainable Development in 2002, and the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States call upon countries to implement sustainable development, including through national sustainable development strategies;

Whereas the Parties have agreed to cooperate in the implementation of a programme of activities entitled United Nations Office for Sustainable Development (hereinafter referred to as the "Office") and to establish the Office in the Republic of Korea;

Whereas it has been agreed between the Parties that the United Nations shall be responsible for the management of the funds provided to the United Nations by the Government to meet the costs of the Office and the Government shall grant the United Nations the necessary privileges, immunities and facilities to enable the Office to perform its functions;

* Entered into force on 22 February 2011 by notification, in accordance with article 20.

Have agreed as follows:

Article 1. Establishment and Location

The United Nations Office for Sustainable Development shall be established as part of the United Nations in the Republic of Korea.

Article 2. Objective and Functions

1. The objective of the Office is to contribute to the efforts of the United Nations in the coordination and implementation of internationally agreed sustainable development goals by carrying out the programme of activities described in this Agreement.

2. The Office shall carry out the following functions:

(*a*) serve as a resource centre and knowledge portal on sustainable development;

(*b*) review and assess the progress and gaps in the implementation of internationally agreed sustainable development goals;

(*c*) provide training programmes;

(*d*) disseminate information, build and participate in professional networks, and undertake outreach activities; and

(*e*) undertake other mutually agreed activities in support of sustainable development.

Article 3. Legal Capacity

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

(*a*) to contract;

(*b*) to acquire and dispose of movable and immovable property; and to institute legal proceedings.

Article 4. Personnel

1. The Office shall be headed by an internationally-recruited official (hereinafter referred to as the "Head of Office") and shall be comprised of other United Nations staff. Both the Head of Office and all other United Nations staff are United Nations officials, irrespective of nationality. All United Nations officials shall be recruited and appointed under the Staff Rules and Regulations of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates, as provided for in General Assembly Resolution 76(1) of 7 December 1946.

2. The United Nations shall notify the Government, from time to time, in writing, of the list of the officials and their families and any changes thereto.

3. As appropriate, the United Nations may engage the services of non-staff personnel in accordance with United Nations regulations, rules, policies and procedures.

4. The Head of Office shall be responsible to the United Nations for the coordination and implementation of the programme of activities of the Office.

Article 5. Financing

The Government shall, subject to its relevant and appropriate laws and regulations and following the annual budget appropriation in the Republic of Korea, contribute substantially to financing the United Nations' activities conducted through the Office. The appropriate authorities of the Government and the United Nations will specify the procedures for the provision, receipt and administration of the aforementioned contribution in supplementary arrangements.

Article 6. Applicability of the Convention to the Office

The Convention on the Privileges and Immunities of the United Nations of 1946 (hereinafter referred to as the "Convention"), to which the Government has been party since 9 April 1992, without prejudice to the reservation made by the Government upon its accession thereto, shall be applicable to the United Nations, including the Office, its property and assets and its officials and experts on mission in the Republic of Korea.

Article 7. Premises and Security

1. For the purposes of this Agreement, the premises offered by the Government for the Office shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention.

2. The premises of the Office shall be used solely to further its functions. The Head of Office may also permit, in a manner compatible with the functions of the Office, the use of the premises and facilities for meetings, seminars, exhibitions and related purposes which are organized by the United Nations, including the Office, and other related organizations.

3. In case of fire or other emergency requiring prompt protective action, the consent of the Head of Office or his/her representative to any necessary entry into the premises shall be presumed if neither of them can be reached in time.

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

(*b*) Without prejudice to and notwithstanding the foregoing, the United Nations may make any provisions relating to its security and the security of its personnel as it deems relevant and necessary in accordance with the relevant decisions and resolutions of the United Nations.

5. Except as otherwise provided in this Agreement or in the Convention, the laws applicable in the Republic of Korea shall apply within the premises of the Office.

6. The premises of the Office shall be under the control and authority of the United Nations, which may establish regulations for the execution of its functions therein.

Article 8. Public Services

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

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

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

Article 9. Communications and Publications

1. The Office shall enjoy, in respect of its official communications, treatment no less favourable than that accorded by the Government to any diplomatic mission or other intergovernmental organization in matters of priorities, rates and taxes on mail, cables, telegrams, telephone and other communications, including wireless transmitters, as well as rates for information to the press and radio.

2. All official communications directed to the Office, or to any of its officials, and outward official communications of the Office, by whatever form transmitted, shall be immune from censorship and from any other form of interference.

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

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

Article 10. Archives

The archives of the Office shall be inviolable.

Article 11. Funds, Assets and Other Property

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

case the United Nations has expressly waived the immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution. It is understood that no service or execution of any legal process, including the seizure of private property, shall take place within the premises of the Office except with the express consent of and under conditions approved by the Head of Office. Without prejudice to the preceding sentence, it is understood that, as a practical matter, the Government cannot prevent all attempts at service of process in the premises.

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

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

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

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

Article 12. Exemption from Taxation

1. The Office and its assets, income and other property shall be:

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

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

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

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

Article 13. Participants in the Office's Meetings

1. Representatives of Members of the United Nations invited to meetings, seminars, training courses, symposiums and workshops organized by the Office shall, while exercising their functions, enjoy the privileges and immunities as set out in Article IV of the Convention.

2. The Government, in accordance with relevant United Nations principles and practices and this Agreement, shall respect the complete freedom of expression of all participants in meetings, seminars, training courses, symposiums and workshops organized by the Office, to which the Convention shall be applicable.

Article 14. Flag and Emblem

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

Article 15. Access, Transit and Residence

The Government shall take the necessary measures to facilitate the entry into and exit from, and movement and sojourn within, the Republic of Korea for all persons referred to herein, travelling for the purpose of official business of the Office, without undue delay. The appropriate authorities of the Government shall grant facilities for speedy travel. Visas and entry permits, where required, shall be issued as promptly as possible to all persons referred to hereunder:

(*a*) the Head of Office and other officials of the Office, as well as their spouses and relatives dependent on them;

(*b*) experts on mission for the Office;

(*c*) officials of the United Nations or specialized agencies, having official business with the Office;

(*d*) personnel of associated Offices and Programmes of the United Nations and persons participating in the programmes of the United Nations; and

(*e*) other persons invited by the Office on official business.

Article 16. Identification

1. Persons referred to in Article 15 shall hold personal identity cards (hereinafter referred to as "IDs") issued by the Office which are equivalent to standard United Nations identity cards.

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

Article 17. Privileges and Immunities

1. The Head of Office and all other staff of the Office shall be accorded the privileges and immunities provided for in Articles V and VII of the Convention, without prejudice to the reservation made by the Government upon accession thereto. They shall, *inter alia*, enjoy:

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

(*b*) exemption from taxation on the salaries and emoluments paid to them by the Office; and

(*c*) immunity from seizure of their official baggage, except in doubtful cases, ranted only to representatives of States and experts on mission.

2. In addition, the Head of Office and all other staff of the Office shall:

(*a*) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

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

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

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

3. Experts on mission for the Office shall be granted the privileges, immunities and facilities provided for in Articles VI and VII of the Convention.

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

Article 18. Dispute Settlement

Any dispute between the Parties arising out of or relating to this Agreement, which is not settled amicably through negotiations or another agreed mode of settlement, shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator and the two arbitrators so appointed shall appoint a third, who shall be the Chairperson. If within two months of the request for arbitration either Party has not appointed an arbitrator, or if within two months of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure for the arbitration shall be fixed by the arbitrators, and the expenses for the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article 19. Respect for Local Laws and Regulations

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

2. The Office shall cooperate at all times with the appropriate authorities of the Government to facilitate the proper administration of justice, secure the observance of police

regulations and prevent the occurrence of any abuse in connection with the privileges and immunities and facilities under this Agreement.

3. Should the Government consider that an abuse of a privilege or immunity conferred by this Agreement has occurred, the Head of Office shall, upon request, consult with the appropriate authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Government and to the Head of Office, the matter shall be determined in accordance with the procedures set out in Article 18.

Article 20. General Provisions

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

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

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

4. The Parties may enter into such supplementary arrangements as may be necessary. Any relevant matter for which no provision is made in this Agreement shall be settled through consultations between the Parties.

5. This Agreement may be terminated by either Party by giving written notice to the other Party of its decision to terminate this Agreement. This Agreement shall cease to be in force six (6) months after receipt of such notice by the other Party, except as regards the normal cessation of the activities of the Office and disposal of its property in the Republic of Korea, as well as the resolution of any disputes between the Parties.

In witness whereof, the undersigned, duly authorized respectively by the Government and the United Nations, have signed this Agreement.

Done in duplicate at Cancun, this 8th day of December, 2010, in the English language.

For the Government of the Republic of Korea	For the United Nations
[*Signed*]	[*Signed*]

(*c*) Framework Agreement between the United Nations and the Republic of Turkey on arrangements regarding privileges and immunities and certain other matters concerning United Nations conferences and meetings held in Turkey. New York, 23 February 2011*

Whereas the holding of United Nations conferences and meetings in Turkey throughout the years has been rewarding for both Parties and continues to generate opportunities for successful exchanges;

Considering that a standing framework agreement concerning key legal and operational matters, including privileges and immunities, liability, settlement of disputes and security, that would be applicable to all future United Nations meetings in Turkey, would greatly simplify the hosting of such meetings in Turkey;

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

Article I. Definitions

For the purpose of the present Agreement:

a) "parties" to the Agreement are the Republic of Turkey and the United Nations;

b) "meeting" or "Meetings" means any conferences, seminars, symposia, courses, workshops, etc. held in Turkey under the auspices of the United Nations; and

c) "meeting premises" shall include all premises, including conference rooms, office space, working areas and other related facilities as agreed with the United Nations for each particular Meeting, as appropriate.

Article II. Object and purpose

This Agreement applies to all Meetings held in Turkey under the auspices of the United Nations, including the funds and programmes of the United Nations. It lays down the fundamental legal and operational arrangements applicable to such Meetings within the territory of Turkey, if not otherwise agreed in writing.

Article III. Privileges and immunities

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (hereinafter referred to as "the Convention") shall be applicable in respect of Meetings. In particular,

a) representatives of states shall enjoy the privileges and immunities provided under article IV of the Convention;

b) officials of the United Nations participating in or performing functions in connection with a Meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

c) experts on mission for the United Nations shall be accorded the privileges and immunities as set out in articles VI and VII of the Convention; and

d) participants invited to a Meeting by the United Nations shall, for the limited purpose of the Meeting, enjoy immunity from legal process in respect of words spoken or written and acts performed by them for that Meeting.

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* Entered into force on 26 April 2011 by notification, in accordance with article XI.

2. The officials of the specialized and related agencies of the United Nations shall, as appropriate, enjoy the privileges and immunities provided under articles V and VII of the Convention or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency of 1 July 1959.*

3. Without prejudice to the preceding paragraphs, all participants and persons performing functions in connection with a 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 in accordance with article 105 of the Charter of the United Nations, the Convention and the present Agreement.

4. Personnel provided for a Meeting by Turkey 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.

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

Article IV. Right of entry and exit

1. All participants and persons performing functions in connection with a Meeting held in Turkey shall have the right of unimpeded entry into and exit from Turkey and no impediment shall be imposed on their transit to and from the Meeting premises.

2. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible. When applications are made three weeks before the opening of a Meeting, visas shall be granted not later than two weeks before the date of the opening of the Meeting. If the application is made less than four weeks before the opening, the visa shall be granted as speedily as possible and not later than 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 participants who were unable to obtain them prior to their arrival.

3. 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.

Article V. Import and export

1. Turkey shall allow the temporary importation, tax-free and duty-free, of all equipment, including technical equipment, and shall waive import duties and taxes on supplies necessary for a particular Meeting. It shall issue without delay any necessary import and export permits for this purpose.

2. Turkey shall permit the temporary import and export of firearms to be used by United Nations security officers assigned to a Meeting.

3. All participants and persons performing functions in connection with a Meeting held in Turkey shall have the right to take out of Turkey at the time of their departure, without any restriction, any unexpended portions of the funds they brought into Turkey

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

in connection with a Meeting and to reconvert any such funds at the rate at which they had been converted.

Article VI. Security

1. Turkey shall furnish such security protection as may be required to ensure the effective functioning of a Meeting in an atmosphere of security and tranquillity free from interference of any kind. Turkey may also employ private security protection to supplement such protection. Such security protection shall be under the direct supervision and control of a senior security official provided by Turkey and will assume responsibility for the security of the areas adjacent to the Meeting premises.

2. The senior United Nations security official and such other United Nations security officers under his command shall have direct responsibility for access to and security within the Meeting premises.

3. The senior security official provided by Turkey shall work in close cooperation with the senior United Nations security official designated by the United Nations Department of Safety and Security.

4. The modalities for cooperation between Turkey and the United Nations on security for each Meeting may be further detailed separately between the Parties.

Article VII. Meeting premises

For the purposes of the Convention, Meeting premises shall be deemed to constitute premises of the United Nations in the sense of Section 3 of the Convention and access thereto shall be subject to the control and authority of the United Nations. Meeting premises shall be inviolable for the duration of a Meeting, including the preparatory stage and the winding-up.

Article VIII. Liability

1. Turkey 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 or loss of property in Meeting premises provided by or under the control of Turkey;

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

c) the employment for the Meeting of personnel provided or arranged for by Turkey.

2. Turkey shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim or other demand, except where it is agreed by Turkey and the Secretary-General of the United Nations that such actions or claims arise from gross negligence or wilful misconduct of such persons.

Article IX. Procurement

In order for Turkey to undertake the acquisition of the goods and services identified in the relevant ad hoc arrangement for a Meeting in a timely manner, such acquisition shall not be subjected to the domestic legislation of Turkey concerning procedures for public procurement.

Article X. Settlement of disputes

Any dispute concerning the interpretation or the application of this Agreement, except for a dispute subject to Section 30 of the Convention or of any other applicable agreement, shall, unless the Parties otherwise agree, be resolved by negotiations or any other agreed mode of settlement. Any such dispute that is not settled by negotiations or any other agreed mode of settlement shall be submitted at the request of either Party for a final decision to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by Turkey 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 a 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 decision on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

Article XI. Final provisions

1. The Parties shall enter into ad hoc arrangements in accordance with this Agreement regarding organizational, financial and other matters in relation to each Meeting held in Turkey.

2. This Agreement shall be signed by both Parties. It shall enter into force upon the receipt by the United Nations of written notification from Turkey that all internal procedures for its entry into force have been completed.

3. 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 the United Nations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph. 4. This Agreement may be terminated by either Party by written notice to the other and shall terminate six months after receipt of such notice. Notwithstanding any such notice of termination, this Agreement shall remain in force until complete fulfilment or termination of all obligations entered into by virtue of this Agreement.

Done in New York on 23 February 2011 in duplicate in the English language. Turkey shall arrange for an official translation of this Agreement into the Turkish language.

For the United Nations:	For the Republic of Turkey:
[*Signed*] Stephen Mathias	[*Signed*] H.E. Mr. Ertuğrul Apakan
Assistant Secretary-General in charge of the Office of Legal Affairs	Permanent Representative of the Republic of Turkey to the United Nations

(*d*) The Memorandum of Understanding between the African Union and the United Nations and the Government of the State of Qatar regarding arrangements in connection with the peace talks in Doha (Qatar). Doha, 3 March 2011*

Whereas the Joint African Union-United Nations Road-Map for the Darfur Political Process of 8 June 2007, as endorsed by the Peace and Security Council of the African Union and the Security Council of the United Nations, foresees conduct of direct negotiations with the parties to the conflict in Darfur, Sudan, for the purpose of ending the conflict in Darfur;

Whereas the Government of the State of Qatar hosts a series of negotiations for this purpose in Doha (Qatar) and also provides necessary assistance to the AU-UN Joint Chief Mediator for Darfur for facilitating renting of needed meeting space for simultaneous consultations with the participants in the rounds of negotiations, workshops, conferences and seminars;

Whereas the parties desire to conclude a Memorandum of Understanding (MOU) with a view to sharing of expenditure and making appropriate arrangements in order to facilitate and support the successful conduct of the negotiations;

Whereas the State of Qatar is a party since 26 September 2007 to the Convention on the Privileges and Immunities of the United Nations;

Now therefore the African Union and the United Nations, on the one part, and the Government of the State of Qatar, on the other, have hereby agreed as follows:

I. Arrangements for Sharing of Expenses

The following arrangements have been agreed between the Government of the State of Qatar, the African Union and the United Nations for the sharing of expenditure relating to the future conduct of rounds of negotiations, workshops, conferences and seminars in Doha:

A. By the Government of the State of Qatar:

The Government of the State of Qatar shall, at its expense, make necessary arrangements and meet expenses for the provision of:

(*a*) appropriate premises for the negotiations;

(*b*) interpreters for ensuring reciprocal simultaneous interpretation between three languages (Arabic, English and French);

(*c*) facilities for photocopying, printing, telephones, telefax, computing, electronic mail and internet, including payment of the charges for use of these facilities;

(*d*) appropriate accommodation, including laundry services, and food for the participants in the negotiations and the AU-UN Joint Mediator for Darfur (but not officials and consultants of, and experts on mission for, the United Nations);

* Entered into force on 3 March 2011 by signature, in accordance with article IV

(*e*) medical facilities for first aid or in the event of emergencies affecting those attending the negotiations;

(*f*) transport between airport and the premises upon arrival and departure of participants and during the negotiations, including a car with a driver for the AU-UN Joint Chief Mediator for Darfur;

(*g*) police protection as may be required to ensure the safety and security of all those attending the negotiations and the effective conduct of the negotiations in an atmosphere of security and tranquility, including, if and as requested, close protection services for the AU-UN Joint Mediator for Darfur;

(*h*) the use of Qatari airspace and Doha airport by special UN flights as provided for in Part B, paragraph (c) below. UN aircraft on such special flights may accordingly use Qatari airspace and Doha airport without the payment of dues, user fees, airport taxes, parking fees, over flight fees, landing charges or any other form of monetary contribution;

(*i*) dealing with any action, claim or other demand against the United Nations or the African Union or against officials of or experts on mission for the United Nations, including the AU-UN Joint Mediator for Darfur, arising out

(i) injury to persons or damage to or loss of property in or on the conference/workshop/seminar premises

(ii) injury to persons or damage to or loss of property caused by, or incurred in using, the transport services that are provided by or under the control of the Government of the State of Qatar;

(*j*) indemnifying and holding harmless the African Union and the United Nations and officials of and experts on mission for the United Nations, including the AU-UN Joint Mediator for Darfur, in respect of any such action, claim or demand except where it is agreed by the United Nations and the Government of the State of Qatar that the damage, loss or injury concerned was caused by the gross negligence or willful misconduct of officials or experts on mission for the United Nations.

B. By the African Union and the Untied Nations:

The African Union and the United Nations shall fund the cost of the following out of the Trust Fund for the AU-UN Joint Mediation Support Team for Darfur (the "JMST") up to the limit of available resources in that Trust Fund:

(*a*) travel of movement leaders and or their representatives by air in economy class from their respective locations to Doha and back. The Government of the State of Qatar hereby agrees to make necessary travel arrangements, on receipt of travel request from the JMST, and subsequently request reimbursement from the African Union and the United Nations on the basis of original bills/receipts of airlines;

(*b*) payment of appropriate daily allowance (per diem) to the movement leaders and their representatives attending the negotiations, workshops, conferences and seminars in Doha as applicable under the UN Financial Regulations and Rules. The Government of the State of Qatar hereby agrees to make necessary payments to the movement leaders and their representatives, upon receipt of a written request from the JMST. That written request shall contain a list of the movement leaders and their representatives who are to receive such payments and shall indicate the ceiling for such payments. The Government of the

State of Qatar will subsequently request reimbursement from the African Union and the United Nations on the basis of original receipts signed by the recipients of the daily allowance and a photocopy of their IDs;

(*c*) operation of special UN flights, if required, for the purpose of transporting movement leaders and or their representatives to and from Doha;

(*d*) renting of additional meeting spaces/rooms for the JMST for the purpose of having separate and exclusive mediation talks with smaller groups of movement leaders and/or their representatives, with facilities for photocopying, printing, telephones, telefax, computing, electronic mail and internet, in or near the venue of the negotiations, workshops, conferences and seminars.

(*e*) settlement of charges for the facilities mentioned at (d) above, including those relating to actual use of stationary/supplies on the basis of itemized original bills.

II. Privileges and Immunities

1. Officials of the United Nations performing functions relating to the negotiations, including the African Union-United Nations Joint Mediator for Darfur, shall enjoy the privileges and immunities provided for in Articles V and VII of the Convention and any experts performing missions for the United Nations in connection with the negotiations shall enjoy the privileges and immunities provided for in Articles VI and VII of that Convention. Consistently with Article II, Section 4, of the Convention on the Privileges and Immunities of the United Nations, the State of Qatar shall ensure the inviolability of all documents belonging to or held by the United Nations, its officials or experts on mission, wherever located.

2. Privileges and immunities are granted to officials of and experts on mission for the United Nations in the interests of the United Nations and not for the personal benefit of the individuals themselves. The United Nations shall take such steps as may be necessary to ensure that those privileges and immunities are not abused. In the event of such abuse, the United Nations and the Government of the State of Qatar shall consult with each other with a view to resolving the problem. In accordance with Sections 20 and 23 of the Convention on the Privileges and Immunities of the United Nations, the Secretary-General of the United Nations shall have the right and duty to waive the immunity of any official of or expert on mission for the United Nations performing functions in relation to the negotiations 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.

3. All persons attending or performing functions in connection with the negotiations shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions, including immunity from legal process in respect of words spoken or written and all acts performed by them in connection with their attendance at the negotiations.

4. Without prejudices to the privileges and immunities accorded to them, every person enjoying such privileges and immunities shall comply with the laws of the State of Qatar and shall not interfere in its internal affairs.

III. Facilities for entry and exit

1. All participants in the conference/workshops/seminars, including officials of and experts on mission for the United Nations, shall:

(*a*) have the right of entry into and exit from the State of Qatar for the purposes of attending or servicing, supporting and facilitating the negotiations;

(*b*) be granted multiple entry visas and entry permits, where required, free of charge and as speedily as possible. Arrangements shall also be made to ensure that visas or permits for the duration of the negotiations are delivered at Doha airport to persons attending the negotiations who were unable to obtain them prior to their arrival;

(*c*) be granted exit permits, where required, free of charge and as speedily as possible;

(*d*) be granted facilities for speedy travel, including assistance in completing immigration and emigration formalities on their entry into, and their departure from, the State of Qatar;

2. The State of Qatar shall put in place special arrangements to ensure the speedy entry into and exit from the State of Qatar of participants who do not hold valid national passports or travel documents.

IV. Final provisions

1. The present MOU shall enter into force immediately upon signature by the Parties.

2. This MOU shall remain in force for the duration of the negotiations and for such period afterwards as is necessary for all matters relating to any of its provisions to be settled.

3. This MOU may be amended in writing by mutual agreement between the Parties. Such Amendment shall become an integral part of the MOU.

4. Any dispute which might arise regarding the interpretation or implementation of the present MOU shall be settled through direct negotiations in a spirit of co-operation between the parties. Any dispute between the African Union or the United Nations and the Government of the State of Qatar that is not settled by negotiations or by any other agreed mode of settlement shall be referred at the request of either party for final decision to a tribunal of three arbitrators, one to be named by the Chairperson of the African Union Commission or the Secretary-General of the United Nations as the case may be, one to be named by the Government of the State of Qatar and the third, who shall be chairperson, to be chosen by the first two. If either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party.

5. The provisions of paragraph 4 above shall apply *mutatis mutandis* in respect of any dispute between the African Union and the United Nations, on the one part, and the Government of the State of Qatar, on the other, except that the first arbitrator shall be appointed jointly by the Chairperson of the African Union Commission and the Secretary-General of the United Nations.

Done at Doha, this 3rd day of March 2011, in duplicate in the English and Arabic languages, both texts being equally authentic.

For the African Union and United Nations	For the State of Qatar
[*Signed*] Djbrill Yipènè Bassolé	[*Signed*] Ahmed bin Abdulla Al-Mahmoud
AU-UN Joint Chief Mediator for Darfur	Minister of State for Foreign Affairs and Member of the Cabinet
Date: 3/03/2011	Date: 3/03/2011

(*e*) Exchange of letters constituting an agreement between the United Nations and Bolivia concerning the Sub-regional Seminar titled "Implementing Andean Community Decision 552" to be held in La Paz, Bolivia, 11–12 April 2011. New York, 8 April 2011*

I

8 April 2011

Excellency,

The United Nations represented by the Office for Disarmament Affairs through its Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC), hereinafter "the United Nations", will jointly organize with the Government of Bolivia, the sub-regional Seminar titled "Implementing Andean Community Decision 552" in La Paz, Bolivia 11–12 April 2011 (hereinafter referred to as "the Seminar"). The Seminar will take place in the Ministry of Foreign Affairs of the Plurinational State of Bolivia and will be conducted in the Spanish language.

The United Nations would like to take this opportunity to thank the Government of Bolivia for hosting this Seminar.

1. It is understood that approximately 30 participants, including government representatives from Andean Community, international experts and United Nations officials will attend the Seminar, as follows:

a) government representatives from the Andean Community following countries (*three participants from each country*): Bolivia, Colombia, Ecuador and Peru.

b) experts from the following countries: Argentina, Brazil, Bolivia, Canada, Colombia, Ecuador, Peru and Switzerland.

c) experts from the following organizations and institutions: Andean Community, Mercado Común del Sur (*MERCOSUR*), SICA and Organization of American States (OAS).

d) officials from the United Nations: United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (*UNLIREC*); United Nations Regional Centre for Peace, Disarmament and Development in Latin America,

* Entered into force on 8 April 2011, in accordance with provisions of said letters.

United Nations Development Programme (UNDP), United Nations Office on Drugs and Crime (UNODC).

2. The United Nations shall be responsible for the provision (including costs and services) of the following:

a) round-trip travel, accommodation, meals and local transportation between the hotel and Seminar Venue for three representatives from each of the following states: Colombia; Ecuador and Peru;

b) round-trip travel, accommodation, meals and local transportation between the hotel and Seminar Venue for experts from Argentina, Brazil, Canada, Colombia, Ecuador, Peru and Switzerland;

c) round-trip travel, accommodation, meals and local transportation between the hotel and Seminar Venue for experts from Andean Community, Mercado Común del Sur (MERCOSUR), SICA and Organization of American States (OAS);

d) lunch and coffee for all participants. No other expenses will be covered by the United Nations for Bolivian national participants;

e) invitation to participants;

f) audio visual equipment during the Seminar; and

g) programme of work and documents to be distributed at the Seminar.

3. The Government shall be responsible for the provision (including costs and services) of the following:

a) conference room and other facilities and space necessary for the Seminar,

b) political and administrative focal points; and

c) security during the Seminar.

4. In accordance with the standard practice of the United Nations, I would also wish to seek your Government's acceptance that the following terms be applied to the Seminar.

5. The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 (hereinafter referred to as "The Convention"), to which the Bolivia is a party, shall be applicable in respect of the Seminar. In particular, representatives of States participating in the Seminar shall enjoy the privileges and immunities provided in Articles IV of the Convention. Officials of the United Nations participating in or performing functions in connection with the Seminar shall enjoy the privileges and immunities provided under articles V and VII of the Convention and participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission under Articles VI and VII of the Convention. Officials of the Specialized Agencies participating in the Seminar shall enjoy the privileges and immunities provided in Articles VI and VII of the Convention on Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947. Without prejudice to the provisions of the Convention, all participants and persons performing functions in connection with the Seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar.

6. All participants and United Nations officials performing functions in connection with the Seminar shall have the right of unimpeded entry into and exit from Bolivia. Visas

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

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

8. 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 at the Seminar sites, or in the conference or office premises which are provided for the Seminar;

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

c) the employment for the Seminar of personnel provided or arranged by the Government; and the Government shall indemnify and hold the United Nations and its officials harmless in respect of any such action, claim or other demand.

9. Any dispute concerning the interpretation or implementation of this Exchange of Letters, except for a dispute subject to the appropriate provisions of the Convention or any other applicable agreement, shall, unless the Parties otherwise agree, be resolved by negotiations or any other agreed mode of settlement.

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

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

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

II

Excellency,

I have the honour to refer to your letter of April 8th, 2011 relating to the arrangements for the hosting of the sub-regional Seminar titled "Implementating Andean Community Decision 552" to be held in La Paz, Bolivia from 11 to 12 April, 2011.

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

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

Accept, Excellency, the assurances of my highest consideration.

New York, April 8th, 2011

[*Signed*] Amb. Rafael Archondo Quiroga
Deputy Permanent Representative

(*f*) Exchange of letters constituting an agreement between the United Nations and Mongolia concerning the Expert Group Meeting "Cooperatives in Development: Beyond 2012" to be held in Ulaanbaatar, Mongolia, from 3 to 6 May 2011. New York, 25 and 26 April 2011*

I

25 April 2011

Excellency,

I have the honour to refer to the arrangements concerning the Expert Group Meeting "Cooperatives in Development: Beyond 2012" (hereinafter referred to as "the Meeting"). The Meeting will be co-organized by the Government of Mongolia represented by the Ministry of Food, Agriculture and Light Industry, and the Ministry of Foreign Affairs and Trade (hereinafter referred to as "the Government"), and the United Nations represented by the Department of Economic and Social Affairs' Division for Social Policy and Development (hereinafter referred to as the "United Nations"). The Meeting will be held at the Conference Hall of the Ministry of Foreign Affairs and Trade of Mongolia, Ulaanbaatar, Mongolia from 3 to 6 May 2011.

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*) up to 10 experts invited by the United Nations, including representatives from national, regional and international governmental and non-governmental organizations, the United Nations system, developmental and research institutions, as well as the cooperative sector;

(*b*) up to 5 representatives of the United Nations Regional Commissions;

(*c*) up to 4 officials from the United Nations Secretariat;

(*d*) up to 6 local government officials selected by the Government; and

(*e*) up to 10 additional participants invited as observers/discussants by the United Nations and the Government, including representatives from national, regional and inter-

* Entered into force on 26 April 2011, in accordance with the provisions of the said letters.

national governmental and non-governmental organizations, the United Nations system, developmental and research institutions, as well as the cooperative sector.

2. The total number of participants will be approximately 35. 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, with simultaneous interpretation into Mongolian. All documentation will be provided in English.

4. The United Nations will be responsible for:

(*a*) the planning and running of the meeting and the preparation of the appropriate documentation, including relevant background documents, session summaries and the final report of the Meeting;

(*b*) the selection and invitation of experts and discussants including representatives from national, regional and international governmental and non-governmental organizations, the United Nations system, developmental and research institutions, as well as the cooperative sector; and

(*c*) the administrative arrangements and costs relating to the issuance of airline tickets and the payment of subsistence allowance for the participants specified in subparagraphs 1(a) and 1(c).

5. The Government will be responsible for:

(*a*) provision of facilities for the Meeting;

(*b*) provision of any necessary office supplies and equipment, including stationery, office equipment, copying machine, telephone, fax (international), computer use, and email and internet access;

(*c*) provision of a minimum of three interpreters for the plenary and working group sessions of the Meeting;

(*d*) provision of local counterpart staff to assist with the planning and any necessary administrative support during the meeting;

(*e*) reproduction of the Meeting materials;

(*f*) local logistical support services, including hotel arrangements and local travel, such as shuttle services to and from the airport, and coordination with the airlines, and transportation to and from the Mongolian Exhibit on Cooperatives and other prearranged site visits; and

(*g*) invitations and any costs related to national participants as specified in paragraph 1(d).

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

7. 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 Mongolia 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 shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by Articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with 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 with the privileges and immunities under Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947;

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

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

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

(*e*) for the purpose of the Convention on the privileges and immunities of the United Nations, the Meeting area shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention on the privileges and immunities of the United Nations and access thereto is subject to the authority and control of the United Nations.

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

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

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

(*c*) the employment for the Meeting of personnel provided or arranged for by he Government; and and the Government shall indemnify and hold harmless the United Nations and its personnel in respect of any such action, claim or other demand.

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. Security within the Meeting area shall be under the direct supervision and control of the United Nations, while the security outside the Meeting area shall be under the direct supervision and control of the Government. The parameters of these two security zones and the modality of cooperation shall be clearly defined by the Government and the Secretariat by the time the premises are handed over to the authority of the United Nations.

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

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 Mongolia regarding the hosting of the Meeting, which shall enter into force on the date of your reply and shall remain in force for the duration of the Meeting, and for such additional period as is necessary for its preparation and for the completion of its work and for the resolution of any matters arising out of the Agreement.

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

[*Signed*] Sha Zukang
Under-Secretary-General
Secretary-General for the Conference on
Sustainable Development (Rio+20)

II

26 April 2011

Mr. Under-Secretary-General,

I have the honour to refer to your letter with Ref. no. DESA/11/00674 of 25 April 2011, relating to the arrangements for the hosting of the Expert Group Meeting "Cooperatives in Development: Beyond 2012" to be held at the Ministry of Foreign Affairs and Trade, from 3 to 6 May 2011 in Ulaanbaatar, Mongolia.

In reply, I wish to confirm hereby that the terms of your proposal are acceptable to the Government of Mongolia.

Consequently, your letter and this reply shall constitute an Agreement between the United Nations and the Government of Mongolia, 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, Mr. Under-Secretary-General, the assurances of my highest consideration.

[*Signed*] H.E. Ms. Enkhtsetseg Ochir
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Mongolia
to the United Nations

(*g*) The Agreement between the United Nations and the Government of the Republic of Kazakhstan relating to the establishment of the Subregional Office for North and Central Asia of the United Nations Economic and Social Commission for Asia and the Pacific. Astana, 4 May 2011*

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

Considering that the General Assembly of the United Nations decided in its resolution 63/260 of 24 December 2008, to approve the establishment of the Subregional Office for North and Central Asia of the United Nations Economic and Social Commission for Asia and the Pacific,

Whereas the Commission, in its letter dated 30 November 2009, following a comprehensive process of consultations with member States, accepted the offer from the Government of the Republic of Kazakhstan, to host the ESCAP Subregional Office for North and Central Asia in Almaty,

Whereas the Government of the Republic of Kazakhstan agrees to ensure the availability of all necessary facilities to enable the Subregional Office to perform its functions and any related activities,

Desiring to conclude an agreement for the purpose of the establishment of an ESCAP Subregional Office for North and Central Asia in the Republic of Kazakhstan,

Have agreed as follows:

Article I. Definitions

For the purpose of the present Agreement, the following definitions shall apply:

(*a*) "office" means the ESCAP Subregional Office for North and Central Asia in Almaty;

(*b*) "the Government" means the Government of the Republic of Kazakhstan;

* Entered into force provisionally on 4 May 2011.

(*c*) "the competent authorities" means central, local and other competent authorities under the law of the Republic of Kazakhstan;

(*d*) "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;

(*e*) "parties" means the United Nations and the Government of the Republic of Kazakhstan;

(*f*) "head of the Office" means the official in charge of the United Nations Office;

(*g*) "officials of the Office" means the Head of the Office and all members of its staff, irrespective of nationality, employed under the Staff Rules and Regulations of the United Nations with the exception of persons who are recruited locally and assigned to hourly rates as provided for in General Assembly resolution 76 (1) of 7 December 1946;

(*h*) "experts on mission" means individuals, other than Office officials or persons performing services on behalf of the United Nations, undertaking missions, coming within the scope of Articles VI and VII of the Convention;

(*i*) "persons performing services on behalf of the United Nations" means individual contractors, other than officials engaged by the Office, to execute or assist in the carrying out of its programmes or other related activities;

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

(*k*) "office premises" means all the premises occupied by the Office or field suboffices, including installations and facilities made available to or occupied, maintained or used by the United Nations in the Republic of Kazakhstan and notified as such to the Government;

(*l*) the expression "United Nations Office Agreement" means the Agreement between the United Nations and the Government of the Republic of Kazakhstan relating to the establishment of a United Nations Interim Office in Kazakhstan concluded on 5 October 1992;

(*m*) "Organization" means the United Nations;

(*n*) "State" means the Republic of Kazakhstan.

Article II. Purpose and scope of activities

1. The purpose of the Office is to promote inclusive and sustainable development and the achievement of the internationally agreed development goals, including the Millennium Development Goals, focusing on the specific priorities of ESCAP member States in North and Central Asia.

2. The presence of the Office will strengthen ESCAP presence and interventions at the subregional level, enabling better targeting and delivery of programmes that address specific key priorities of member States in North and Central Asia subregion.

Article III. Establishment of the subregional office

The Subregional Office shall be established in the city of Almaty, Republic of Kazakhstan, to carry out the functions of a Subregional Office of ESCAP for North and Central Asia.

Article IV. The United Nations Office Agreement

1. The Parties recall the United Nations Office Agreement, which applies, *inter alia*, to the United Nations Development Programme, the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Environmental Programme and the United Nations Population Fund in Kazakhstan, and recall, in particular, paragraph 2 of Article XVIII of the United Nations Office Agreement entitled "Supplemental Agreements" which provides that the United Nations and the Government may enter into any supplemental Agreement as both Parties may deem appropriate.

2. The Parties agree that the United Nations Office Agreement shall apply, *mutatis mutandis*, to ESCAP in Kazakhstan, including its Subregional Office.

Article V. Security and protection

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

2. The competent authorities shall take effective and adequate action which may be required to ensure the appropriate security, safety and protection of officials of the Office, experts on mission, persons performing services on behalf of the United Nations and locally recruited personnel assigned to hourly rates, which is indispensable for the proper functioning of the Office free from interference of any kind.

Article VI. Participants in United Nations' meetings

1. Representatives of Members of the United Nations invited to meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office and other related organizations shall, while exercising their functions, enjoy the privileges and immunities as set out in Article IV of the Convention.

2. The Government, in accordance with relevant United Nations principles and practices and the present Agreement, shall respect the complete freedom of expression of all participants of meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office and other related organizations, to which the Convention shall be applicable. All participants and persons performing functions in connection with the meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office and other related organizations shall enjoy such privileges, immunities and facilities as are necessary for the independent exercise of their participation and functions. In particular, all participants and persons performing services in connection with the meetings, seminars, training courses, symposiums, workshops and

similar activities organised by the Office and other related organizations shall be immune from legal process in respect of words spoken or written and acts done in connection with such meetings, seminars, training courses, symposiums, workshops and similar activities.

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

1. The competent authorities shall grant working permits for spouses of Officials assigned to the Office whose duty station is in the Host State, in accordance with the procedures established by the national legislation of the Host State.

2. The competent authorities shall issue visas and residence permits and any other documents, where required, to household employees of officials assigned to the Office as speedily as possible.

Article VIII. Administrative and financial arrangements

The Parties shall conclude a separate international agreement concerning the administrative and financial arrangements for the Office.

Article IX. Final provisions

1. This Agreement shall enter into force on the date of receipt by the United Nations through diplomatic channels of a written notification from the Government about the completion of internal procedures necessary for the Agreement to enter into force.

2. Upon mutual consent, the Parties may amend this Agreement through an exchange of notes or by way of other instruments, and any such amendments shall be deemed to be an integral part of this Agreement.

3. This Agreement shall cease to be in force six months after the date of receipt by either Party through diplomatic channels of the written notification of the other Party on its intention to terminate it.

4. The obligations assumed by the Parties under this Agreement shall continue to be applicable between the Parties after the termination of this Agreement to the extent necessary to permit orderly withdrawal of personnel, funds and property of ESCAP and of any Executing Agency, or of any persons performing services on their behalf under this Agreement, and the resolution of any disputes between the Parties.

In witness whereof, the undersigned, being duly authorized thereto, have signed this Agreement in two copies each in the English and Kazakh languages, at Astana on this 4 day of May 2011. In case of disagreement in the application or interpretation of this Agreement, the Parties shall refer to the English text.

For the United Nations	For the Government of the Republic of Kazakhstan
[*Signed*] Noeleen Heyzer Under-Secretary-General of the United Nations and Executive Secretary of United Nations Economic and Social Commission for Asia and the Pacific	[*Signed*] Yerzhan Kazykhanov Minister Ministry of Foreign Affairs Republic of Kazakhstan

(*h*) Memorandum of Understanding between the United Nations and the Government of the Democratic Socialist Republic of Sri Lanka concerning contributions to the United Nations Stand-By Arrangements System. New York, 20 May 2011[*] [**]

The Signatories to the present Memorandum

Lieutenant General Babacar Gaye

Military Adviser

For Peacekeeping Operations, Representing

The United Nations

And

H.E. Mr. Palitha T. B. Kohona

Permanent Representative of the Democratic Socialist Republic of Sri Lanka to the United Nations,

Representing the Government of the Democratic Socialist Republic of Sri Lanka

Recognizing the need to expedite the provision of certain resources to the United Nations in order to effectively implement in a timely manner, the mandate of the United Nations peacekeeping operations authorized by the Security Council,

Further recognizing that the advantages of pledging resources for peacekeeping operations contributes to enhancing flexibility and low costs,

Have reached the following understanding:

I. Purpose

The purpose of the present Memorandum of Understanding is to identify the resources which the Government of the Democratic Socialist Republic of Sri Lanka has indicated that it will provide to the United Nations for use in peacekeeping operations under the specified conditions.

II. Description of resources

1. The detailed description of the resources to be provided by the Government of the Democratic Socialist Republic of Sri Lanka is set out in the annex[***] to the present Memorandum of Understanding.

2. In the preparation of the annex, the Government of the Democratic Socialist Republic of Sri Lanka and the United Nations, have followed the guidelines for the provision of resources for United Nations peacekeeping operations.

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[*] Entered into force on 20 May 2011 by signature, in accordance with article IV.

[**] The full text of the Memorandum of Understanding, including annexes, is available from http://treaties.un.org/.

[***] Not reproduced herein.

III. Condition of provision

The final decision whether to actually deploy the resources by the Government of the Democratic Socialist Republic of Sri Lanka remains a national decision.

IV. Entry into effect

1. The present Memorandum of Understanding shall come into effect on the date of its signature.

2. The present Memorandum of Understanding shall cease to have effect three months after the date on which either signatory gives written notice to the other signatory of its intention to terminate it.

V. Modification

The present Memorandum of Understanding including the annex may be modified at any time by the signatories through exchange of letters.

Signed in New York on 20 May 2011

For the United Nations	For the Government of the Democratic Socialist Republic of Sri Lanka
[*Signed*] Lieutenant General Babacar Gaye	[*Signed*] H.E. Mr. Palitha T.B. Kohona
Military Adviser for Peacekeeping Operations	Permanent Representative of the Democratic Socialist Republic of Sri Lanka to the United Nations

(*i*) Memorandum of Understanding between the United Nations and the Argentine Republic and the Republic of Chile concerning contributions to the United Nations Stand-By Arrangement System. Buenos Aires, 14 June 2011*

The signatories to the present memorandum

The United Nations

and

The Argentine Republic

and

The Republic of Chile,

hereinafter referred to as "the Parties",

Recognizing the need to expedite the provision of certain resources to the United Nations in order to effectively implement in a timely manner, the mandate of the United Nations peacekeeping operations authorized by the Security Council,

Further recognizing that the advantages of pledging resources for peacekeeping operations contributes to enhancing flexibility and low costs,

* Entered into force 14 June 2011 by signature, in accordance with article V.

Bearing in mind the Charter of the United Nations,

Have reached the following understanding:

I. Purpose

The purpose of the present Memorandum of Understanding is to identify the resources which the Argentine Republic and the Republic of Chile have indicated that they will provide as a combined contribution to the United Nations for use in peacekeeping operations under the specified conditions, as from the year 2012.

II. Description of resources

1. The detailed description of the resources to be provided by the Argentine Republic and the Republic of Chile as a combined contribution is set out in the annex to the present Memorandum of Understanding, which forms an integral part of this instrument, and is in accordance with the Memorandum of Understanding between the Ministries of Foreign Relations, International Trade and Worship and of Defense of the Argentine Republic, and the Ministries of Foreign Affairs and of National Defence of the Republic Of Chile on the "Cruz del Sur" combined peacekeeping force, signed on 22 November 2010 (hereafter referred to as "the "Cruz del Sur" MOU").

2. In the preparation of the annex, the Argentine Republic and the Republic of Chile and the United Nations have followed the guidelines for the provision of resources for United Nations peacekeeping operations.

III. Condition of provision

The final decision whether to actually deploy the resources by the of Argentine Republic and the Republic of Chile to any peacekeeping operations remains a decision to be adopted by their national authorities, in accordance with the provisions of the "Cruz del Sur" MOU, and the constitutional and legal provisions which are in force in both States.

IV. Force employment

The deployment of resources may be in whole, or in part, as described in the annex. As the "Cruz del Sur" is a binational force, deployment of any kind will consist of integrated Argentine and Chilean elements, which shall be under unified command.

V. Entry into force

1. The present Memorandum of Understanding shall enter into force on the date of its signature.

2. The present Memorandum of Understanding may be terminated at any time by any party, subject to a period of notification in writing of not less than three months to the other party.

VI. Language

The present Memorandum of Understanding is done in three originals, in the English and Spanish languages, both texts being equally authentic.

VII. Modification

The present Memorandum of Understanding, including the annex, may be modified at any time by the Parties through exchange of letters.

Signed in Buenos Aires on 14th June 2011.

For the United Nations	For the Argentine Republic	For the Republic of Chile
[*Signed*] Lieutenant General Babacar Gaye	[*Signed*] H.E. Mr. Arturo Puricelli	[*Signed*] H.E. Mr. Andrés Allamand
Military Adviser of DPKO on behalf of the United Nations	Minister of Defense of Argentina on behalf of the Argentine Republic	Minister of National Defense of the Republic of Chile on behalf of the Republic of Chile

ANNEX TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED NATIONS AND THE GOVERNMENT OF THE ARGENTINE REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF CHILE AS REGARDS THE CONTRIBUTION TO THE UNITED NATIONS STAND-BY ARRANGEMENTS SYSTEM

SUMMARY OF CONTRIBUTIONS

National Number	Description	Structure/Category	Source	Response Time	Personnel	Note
1	Ground Combined Task Force (Equivalent to Battalion UNSAS TOE)	Units General Staff, Command Company, Logistics Company and two Mechanized Infantry Battalions. Each Battalion is integrated by one Command and Support Company and two Mechanized Infantry Companies.	Military	90 days	1001	Fully equipped. Self-sustainment for 90 days. Communications: MAF/UA-FM/AF/ Telephone Level 1+ medical care
2	Surface Navy Group	Units. Command and Support Unit. Two Surface Navy Units.	Military	90 days	189	Fully equipped. Self-sustainment for 90 days. *Capabilities* Patrol and surveillance. Control, record and seizure of vessels. Escort and control of assigned areas. Transport of personnel and equipment. Search and rescue. Evacuation of non-combatants.
3	Combined Unit of Transport Helicopters	Units General staff. Support Unit. 2 Units of medium size Helicopters 2 Units of light Helicopters Maintenance Unit.	Military	90 days	195	Fully equipped. Self-sustainment for 90 days. Communications: VHF/UHF FM/HF/ Telephone Aircraft and airport Support Team. Total: 8 Helicopters (4 medium size Helicopters and 4 light Helicopters).

(*j*) Exchange of letters constituting an agreement between the United Nations and the Government of the Federal Democratic Republic of Ethiopia concerning the regional course in international law, to be held in Addis Ababa, Ethiopia. New York, 2 June 2011 and 14 July 2011*

I

2 June 2011

Excellency,

I have the honour to express my appreciation for Ethiopia's commitment to the enhancement of international cooperation, both on a universal level as a founding Member of the United Nations, as well as on a regional level as a host to the Economic Commission for Africa and the African Union. I also wish to acknowledge Ethiopia's strong support for the teaching and study of international law as a long-standing member of the Advisory Committee on the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, established by the General Assembly in 1965.

I have the honour to refer to the arrangements concerning the organization of the Regional Course in International Law (hereinafter referred to as "the Regional Course"), which is an activity conducted under the Programme of Assistance.

The Regional Course will be organized by the United Nations, represented by the Office of Legal Affairs (Codification Division) (hereinafter referred to as "the United Nations"), in cooperation with the Government of Ethiopia, represented by the Ministry of Foreign Affairs (hereinafter referred to as "the Government"), and will be held in Addis Ababa from 6 February to 2 March2012. The organization of the Regional Course is subject to the availability of necessary funding. With the present letter, I wish to obtain your Government's acceptance of the following:

1. The purpose of the regional will be to provide international law training to persons with a legal background and professional experience in international law from Africa, primarily present in Addis Ababa, between 24 and 45 years of age, and with a demonstrated proficiency in French.

2. Candidates from the following countries will be invited to apply to the regional course: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

3. The selection of the participants is made by the United Nations. A list of participants will be provided to the Government following the completion of the selection process. The maximum number of participants will be 35, comprising up to 20 fellowship recipients (no more than one fellowship recipient per country) and self-funded participants from the countries listed in paragraph 2 (of which two may be from the Host Country), as well as from international and regional organizations.

* Entered into force on 14 July 2011, in accordance with the provisions of the letter.

4. The Regional Course will be held at the Economic Commission for Africa and will be conducted in French.

5. The United Nations will be responsible for:

(*a*) providing a suitable venue for the Regional Course, including necessary equipment and service for visual presentations;

(*b*) planning and running the Regional Course, including developing the curriculum and inviting lecturers;

(*c*) disseminating information, receiving applications and selecting participants;

(*d*) preparing study materials relevant to the course and shipping them to Addis Ababa;

(*e*) providing a course certificate issued by the United Nations;

(*f*) evaluating and reporting following the conclusion of the Regional Course;

(*g*) providing two legal officers to be present in Addis Ababa for the duration of the Regional Course;

(*h*) providing lunch and coffee breaks for the participants and lecturers;

(*i*) providing travel, per diem and remuneration for lecturers;

(*j*) providing travel, stipends and health insurance for up to twenty participants who are not present in Addis Ababa; and

(*k*) providing any necessary office space and equipment, including a photocopying machine and word processing facilities, and necessary communication facilities (telephone, facsimile and Internet) for use by the United Nations legal officers and lecturers during their stay in Addis Ababa.

6. The Government will be responsible for providing a local counterpart to assist with advance planning and necessary administrative support during the Regional Course and for assisting with fund raising activities undertaken in relation to the organization of the Regional Course.

7. The Government will no later than 30 June 2011 designate a person to act as focal point in Addis Ababa, to provide necessary assistance for the organization of the Regional Course, including addressing administrative issues prior to and during the Regional Course.

8. The following terms shall apply to the Regional Course:

(a) (i) 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 Regional Course. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on missions 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 Regional Course shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(ii) Without prejudice to the provisions of the Convention, all participants and persons performing functions in connection with the Regional Course shall enjoy

such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Regional Course;

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

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

9. I further wish to propose that the terms of the Agreement between the United Nations and Ethiopia regarding the headquarters of the United Nations Economic Commission for Africa, signed at Addis Ababa on 18 June 1958, as supplemented by the Agreements of 26 May 1971 and of 18 January 1990, shall apply *mutatis mutandis* to the Regional Course.

10. (*a*) Any dispute concerning the interpretation or implementation of the provisions of the Agreement regarding the Headquarters of the United Nations Economic Commission for Africa of 18 June 1958, as supplemented by the Agreements of 26 May 1971 and of 18 January 1990, shall be settled in accordance with the settlement of disputes provision contained herein.

(*b*) Any other dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to section 30 of the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946, to which the Government is a party, 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 negotiations or any other agreed mode of settlement shall be submitted at the request of either party for a final decision to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government, and the third, who shall be the Chairperson, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the Chairperson, then such arbitrators shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decision on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

11. The United Nations and the Government may agree in writing to extend this Agreement to apply to Regional Courses in International Law to be held in Addis Ababa in subsequent years.

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

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

[*Signed*] Stephen Mathias

Assistant Secretary-General
in charge of the Office of Legal Affairs

II

Permanent Mission of the Federal Democratic Republic of Ethiopia
to the United Nations

14 July 2011

Dear Ms. Partricia O'Brien

I have the honor to refer to a letter by Mr. Stephen Mathias, Assistance Secretary-General for Legal Affairs, dated 2 June 2011 relating to the proposed arrangements for the hosting of the "the regional course in international law" to be held in Addis Ababa, Ethiopia from 6 February to 2 March 2012.

In reply, I have the honor to confirm that the terms of your proposal are acceptable to the Government of Federal Democratic Republic of Ethiopia. Consequently, your letter and this reply shall constitute an Agreement between the United Nations and the Government of Federal Democratic Republic of Ethiopia, which shall enter into force on today's date, shall remain in force for the duration of the regional course, and for such additional period as necessary for the preparation of similar course in the future.

Accept, Excellency, the assurances of my highest consideration.

[*Signed*] Takeda Alemu
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

(*k*) The Status of Forces Agreement between the United Nations and the Government of the Republic of South Sudan concerning the United Nations Missions in South Sudan ("SOFA"). Juba, 8 August 2011*

I. Definitions

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

* Entered into force on 8 August 2011 by signature, in accordance with paragraph 62.

(*a*) "UNMISS" means the United Nations Mission in South Sudan, established in accordance with Security Council resolution 1996 (2011) of 8 July 2011. UNMISS shall consist of:

(i) the "Special Representative" appointed by the Secretary-General of the United Nations. Any reference to the Special Representative in this Agreement shall, except in paragraph 26, include any member of UNMISS to whom he or she delegates a specified function or authority;

(ii) a "civilian component" consisting of United Nations officials and of other persons assigned by the Secretary-General to assist the Special Representative or made available by participating States to serve as part of UNMISS;

(iii) a "military component" consisting of military and civilian personnel made available to UNMISS by participating States at the request of the Secretary-General;

(*b*) a "member of UNMISS" means the Special Representative of the Secretary-General and any member of the civilian or military components;

(*c*) "the Government" means the Government of the Republic of South Sudan;

(*d*) "the territory" means the territory of the Republic of South Sudan;

(*e*) a "participating State" means a State providing personnel, services, equipment, provisions, supplies, materials and other goods, including spare parts and means of transport, to any of the above-mentioned components of UNMISS;

(*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 Republic of South Sudan intends to become a Party;

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

(*h*) "vehicles" means civilian and military vehicles in use by the United Nations and operated by members of UNMISS, participating States or contractors in support of UNMISS activities;

(i) "vessels" means civilian and military vessels in use by the United Nations and operated by members of UNMISS, participating States or contractors in support of UNMISS activities;

(*j*) "aircraft" means civilian and military aircraft in use by the United Nations and operated by members of UNMISS, participating States or contractors in support of UNMISS activities.

II. Application of the present agreement

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to UNMISS or any member thereof or to contractors shall apply in South Sudan.

III. Application of the convention

3. UNMISS, its property, funds and assets and its members, including the Special Representative, shall enjoy the privileges and immunities specified in the present Agreement as well as those provided for in the Convention.

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

IV. Status of UNMISS

5. UNMISS and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. UNMISS 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.

6. Without prejudice to the mandate of UNMISS and its international status:

(a) the United Nations shall ensure that UNMISS shall conduct its operation in South Sudan with full respect for the principles and rules of the international conventions applicable to the conduct of military personnel. These international conventions include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict;

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

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

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

United Nations flag, markings and identification

8. The Government recognizes the right of UNMISS to display within South Sudan the United Nations flag on its headquarters, camps or other premises, vehicles, vessels and otherwise as decided by the Special Representative. Other flags or pennants may be displayed only in exceptional cases. In such cases, UNMISS shall give sympathetic consideration to observations or requests of the Government.

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

Communications

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

11. Subject to the provisions of paragraph 10:

(*a*) UNMISS shall have the right to establish, install and operate United Nations radio stations under its exclusive control to disseminate to the public in South Sudan information relating to its mandate. Programmes broadcast on such stations shall be under the exclusive editorial control of UNMISS and shall not be subject to any form of censorship. UNMISS will make the broadcast signal of such stations available to the state broadcaster upon request for further dissemination through the state broadcasting system. Such United Nations radio stations shall be operated in accordance with the International Telecommunication Convention and Regulations. The frequencies on which such stations may operate shall be decided upon in cooperation with the Government at the earliest possible date after signature of this Agreement or, as the case may be, on the request of UNMISS, preferably within fifteen (15) working days. UNMISS shall be exempt from any taxes on and fees for the allocation of frequencies for use by such stations, as well as from any taxes on or fees for their use.

(*b*) UNMISS shall have the right to disseminate to the public in South Sudan information relating to its mandate through official printed materials and publications, which UNMISS may produce itself or through private publishing companies in South Sudan. The content of such materials and publications shall be under the exclusive editorial control of UNMISS and shall not be subject to any form of censorship. UNMISS shall be exempt from any prohibitions or restrictions regarding the production or the publication or dissemination of such official materials and publications, including any requirement that permits be obtained or issued for such purposes. This exemption shall also apply to private publishing companies in South Sudan which UNMISS may use for the production, publication or dissemination of such materials or publications.

(*c*) UNMISS shall have the right to install and operate radio sending and receiving stations, as well as satellite systems, in order to connect appropriate points within the territory of South Sudan with each other and with United Nations offices in other countries, and to exchange telephone, voice, facsimile and other electronic data with the United Nations global telecommunications network. Such telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations. The frequencies on which such services may operate shall be decided upon in cooperation with the Government. If no decision has been reached fifteen (15) working days after the matter has been raised by UNMISS with the Government, the Government shall immediately allocate suitable frequencies to UNMISS for this purpose. UNMISS shall be exempt from any taxes on and fees for the allocation of frequencies for this purpose, as well as from any taxes on or fees for their use.

(*d*) UNMISS shall enjoy, within the territory of South Sudan, 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 UNMISS, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The Government shall, as soon as possible after signature of this Agreement or, as the case may be, on the request of UNMISS, allocate suitable frequencies, preferably within fifteen (15) working days. UNMISS shall be exempt from any taxes on and fees for the allocation of frequencies for this purpose, as well as

from any taxes on or fees for their use. Connections with the local system of telephone, facsimile and other electronic data may be made only after consultation and in accordance with arrangements with the Government. Use of the local system of telephone, facsimile and other electronic data shall be charged at the most favourable rate.

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

Travel and transport

12. UNMISS, 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, including the vehicles, vessels and aircraft of contractors used exclusively in the performance of their services for UNMISS, shall enjoy full and unrestricted freedom of movement without delay throughout South Sudan by the most direct route possible, without the need for travel permits or prior authorization or notification, except in the case of movements by air, which will comply with ICAO safety regulations and the customary procedural requirements for flight planning and operations within the airspace of South Sudan as promulgated and specifically notified to UNMISS by the Civil Aviation Authority of South Sudan. This freedom shall, with respect to large movements of personnel, stores, vehicles or aircraft through airports or on railways or roads used for general traffic within South Sudan, be coordinated with the Government. The Government shall, where necessary, provide UNMISS with maps and other information, including maps of and information on the location of minefields and other dangers and impediments, which may be useful in facilitating UNMISS's movements and ensuring the safety and security of its members.

13. Vehicles, vessels and aircraft shall not be subject to registration or licensing by the Government, it being understood that all vehicles shall carry third party insurance.

14. UNMISS and its members and contractors, together with vehicles, vessels and aircraft, including vehicles, vessels and aircraft of contractors used exclusively in the performance of their services for UNMISS, may use roads, bridges, rivers, canals and other waters, port facilities, airfields and airspace without the payment of any form of monetary contributions, dues, tolls, user fees, airport taxes, parking fees, overflight fees, port fees or charges, including wharfage and compulsory pilotage charges. However, UNMISS and its contractors 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 UNMISS

15. UNMISS, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the Convention. The provisions of Article II of the Convention which apply to UNMISS shall also apply to the property, funds and assets of participating States used in South Sudan in connection with

the national contingents serving in UNMISS, as provided for in paragraph 4 of the present Agreement. The Government recognizes in particular:

(*a*) the right of UNMISS, as well as of contractors, to import, by the most convenient and direct route by sea, land or air, free of duty, taxes, fees and charges and free of other 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 UNMISS or for resale in the commissaries provided for below. For this purpose, the Government agrees expeditiously to establish, at the request of UNMISS, temporary customs clearance facilities for UNMISS at locations in South Sudan convenient for UNMISS not previously designated as official ports of entry for South Sudan;

(*b*) the right of UNMISS to establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of the members of UNMISS, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified 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 UNMISS and shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries;

(*c*) the right of UNMISS, as well as of contractors, to clear ex customs and excise warehouse, free of duty, taxes, fees and charges and free of other 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 UNMISS or for resale in the commissaries provided for above;

(*d*) the right of UNMISS, as well as of contractors, to re-export or otherwise dispose of such property and equipment, including spare parts and means of transport, as far as they are still usable, and all unconsumed provisions, supplies, materials, fuel and other goods so imported or cleared ex customs and excise warehouse which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of South Sudan or to an entity nominated by them.

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

V. Facilities for UNMISS and its contractors

Premises required for conducting the operational and administrative activities of UNMISS

16. The Government shall provide without cost to UNMISS and in agreement with the Special Representative for as long as may be required such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of UNMISS, including the establishment of the necessary facilities for maintaining communications in accordance with paragraph 11. Without prejudice to the fact that all such premises remain territory of South Sudan, they shall be inviolable and subject to the exclusive control and authority of the United Nations. The Government shall guarantee unimpeded access to such United Nations premises. Where United Nations troops are co-located with military personnel of the host country, a permanent, direct and immediate access by UNMISS to those premises shall be guaranteed.

17. The Government undertakes to assist UNMISS 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 taxes, fees and duties. Where such utilities or facilities are not provided free of charge, payment shall be made by UNMISS on terms to be agreed with the competent authority. UNMISS 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 UNMISS as to essential government services.

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

19. The United Nations alone may consent to the entry of any government officials or of any other person who are not members of UNMISS to such premises.

Provisions, supplies and services, and sanitary arrangements

20. The Government agrees to grant promptly, upon presentation by UNMISS or by 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, used in support of UNMISS, including in respect of import by contractors, free of any restrictions and without the payment of monetary contributions or duties, fees, charges or taxes, including value-added tax. The Government likewise agrees to grant promptly all necessary authorizations, permits and licenses required for the purchase or export of such goods, including in respect of purchase or export by contractors, free of any restrictions and without the payment of monetary contributions, duties, fees, charges or taxes.

21. The Government undertakes to assist UNMISS 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 UNMISS or by contractors for the official and exclusive use of UNMISS, 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 UNMISS and contractors from general sales taxes in respect of all local purchases for official use. In making purchases on the local market, UNMISS shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy.

22. For the proper performance of the services provided by contractors, other than South Sudan nationals resident in South Sudan, in support of UNMISS, the Government agrees to provide contractors with facilities for their entry into and departure from South Sudan, without delay or hindrance, and for their residence in South Sudan, as well as for their repatriation in time of crisis. For this purpose, the Government shall promptly issue to contractors, free of charge and without any restrictions within the earliest possible time-frame and preferably within forty-eight (48) hours of application, all necessary visas, licenses, permits and registrations. Contractors, other than South Sudan nationals resident in South Sudan, shall be accorded exemption from taxes and monetary contributions in South Sudan on services, equipment, provisions, supplies, fuel, materials and other goods,

including spare parts and means of transport, provided to UNMISS, including corporate, income, social security and other similar taxes arising directly from or related directly to the provision of such services or goods.

23. UNMISS and the Government shall co-operate 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

24. UNMISS 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 UNMISS and to accelerate the process of such recruitment.

Currency

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

VI. Status of the members of UNMISS

Privileges and immunities

26. The Special Representative, the Commander of the military component of UNMISS and such high-ranking members of the Special Representative's staff as may be agreed upon with the Government shall have the status specified in Sections 19 and 27 of the Convention, provided that the privileges and immunities therein referred to shall be those accorded to diplomatic envoys by international law.

27. Officials of the United Nations assigned to the civilian component to serve with UNMISS, as well as United Nations Volunteers, who shall be assimilated thereto, remain officials of the United Nations entitled to the privileges and immunities of Articles V and VII of the Convention.

28. Military observers, military liaison officers, United Nations civilian police 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.

29. Military personnel of national contingents assigned to the military component of UNMISS shall have the privileges and immunities specifically provided for in the present Agreement.

30. Locally recruited personnel of UNMISS shall enjoy the immunities concerning official acts and exemption from taxation and immunity from national service obligations provided for in Sections 18 (a), (b) and (c) of the Convention.

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

32. Members of UNMISS shall have the right to import free of duty their personal effects in connection with their arrival in South Sudan. They shall be subject to the laws and regulations of South Sudan governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in South Sudan with UNMISS. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of UNMISS, including the military component, upon prior written notification. On departure from South Sudan, members of UNMISS 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 or from a participating State and are a reasonable residue thereof. Special arrangements shall be made for the implementation of the present provisions in the interests of the Government and the members of UNMISS.

33. 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 South Sudan by the members of UNMISS, in accordance with the present Agreement.

Entry, residence and departure

34. The Special Representative and members of UNMISS shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from South Sudan.

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

36. For the purpose of such entry or departure, members of UNMISS shall only be required to have: (a) an individual or collective movement order issued by or under the authority of the Special Representative or any appropriate authority of a participating State; and (b) a personal identity card issued in accordance with paragraph 37 of the present Agreement, except in the case of first entry, when the United Nations laissez passer, national passport or personal identity card issued by the United Nations or appropriate authorities of a participating State shall be accepted in lieu of the said identity card.

Identification

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

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

Uniforms and arms

39. Military members and United Nations military observers, United Nations military liaison officers and civilian police of UNMISS shall wear, while performing official duties, the national military or police uniform of their respective States with standard United Nations accoutrements. United Nations Security Officers and Field Service officers may wear the United Nations uniform. The wearing of civilian dress by the abovementioned members of UNMISS may be authorized by the Special Representative at other times. Military members, military observers, and civilian police of UNMISS, United Nations Security Officers and United Nations close protection officers designated by the Special Representative may possess and carry arms, ammunition and other items of military equipment, including global positioning devices, while on official duty in accordance with their orders. Those carrying weapons while on official duty other than those undertaking close protection duties must be in uniform at that time.

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 UNMISS, including locally recruited personnel, of any UNMISS vehicles and for the practice of any profession or occupation in connection with the functioning of UNMISS, provided that no permit to drive a vehicle shall be issued to any person who is not already in possession of an appropriate and valid license.

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 UNMISS. 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 paragraph 39, the Government further agrees to accept as valid, without tax or fee, permits or licenses issued by the Special Representative to members of UNMISS for the carrying or use of firearms or ammunition in connection with the functioning of UNMISS.

Military police, 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 UNMISS, including locally recruited personnel. To this end, personnel designated by the Special Representative shall police the premises of UNMISS 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 UNMISS.

44. The military police of UNMISS shall have the power of arrest over the military members of UNMISS. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent Commander for appropriate disciplinary action. The personnel mentioned in paragraph 43 above may take into custody any other

person on the premises of UNMISS. 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 provisions of paragraphs 26 and 28, officials of the Government may take into custody any member of UNMISS:

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

(*b*) when such a member of UNMISS is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of UNMISS, 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), UNMISS or the Government, as the case may be, may make a preliminary interrogation, but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

47. UNMISS 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 are applied to and in respect of UNMISS, its members and associated personnel and their equipment and premises. In particular:

(i) the Government shall take all appropriate measures to ensure the safety, security and freedom of movement of UNMISS, its members and associated personnel and their property and assets. It shall take all appropriate steps to protect members of UNMISS 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 UNMISS are inviolable and subject to the exclusive control and authority of the United Nations;

(ii) if members of UNMISS 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;[*]

[*] United Nations, *Treaty Series*, vol. 45, p. 5.

(iii) the Government shall establish the following acts as crimes under its national law and make 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 UNMISS or its associated personnel;

b) a violent attack upon the official premises, the private accommodation or the means of transportation of any member of UNMISS 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 shall establish its jurisdiction over the crimes set out in paragraph 48 (iii) above: (a) when the crime was committed on the territory of South Sudan; (b) when the alleged offender is a national of South Sudan; (c) when the alleged offender, other than a member of UNMISS, is present in the territory of South Sudan, unless it has extradited such a person to the State on whose territory the crime was committed, or to the State of his or her nationality, or to the State of his or her habitual residence if he or she is a stateless person, or to the State of the nationality of the victim;

(v) the Government shall ensure the prosecution, without exception and without delay, of persons accused of acts described in paragraph 48 (iii) above who are present in the territory of South Sudan (if the Government does not extradite them), as well as those persons that are subject to its criminal jurisdiction who are accused of other acts in relation to UNMISS 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 UNMISS, its members and associated personnel and their equipment during the exercise of their functions.

Jurisdiction

50. All members of UNMISS, 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 UNMISS and after the expiration of the other provisions of the present Agreement.

51. Should the Government consider that any member of UNMISS has committed a criminal offence, it shall promptly inform the Special Representative and present to him any evidence available to it. Subject to the provisions of paragraph 26:

(*a*) if the accused person is a member of the civilian component or a civilian member of the military component, the Special Representative shall conduct any necessary supple-

mentary 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 South Sudan shall ensure that the member of UNMISS concerned is brought to trial and tried in accordance with international standards of justice, fairness and due process of law, as set out in the International Covenant on Civil and Political Rights,* to which South Sudan intends to become a Party;

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

52. If any civil proceeding is instituted against a member of UNMISS before any court of South Sudan, 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 South Sudan shall grant the member of UNMISS concerned sufficient opportunity to safeguard his or her rights in accordance with due process of law. If the Special Representative certifies that a member of UNMISS 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 (90) days. Property of a member of UNMISS 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 UNMISS 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 UNMISS who dies in South Sudan, as well as that member's personal property located within South Sudan, 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 UNMISS, except for those arising from operational necessity, and which cannot be settled through the internal procedures of the United Nations, shall be settled by the United Nations in the manner provided for in paragraph 55 of the present Agreement, provided that the claim is submitted within six (6) months following the occurrence of the loss, damage or injury or, if the claimant did not know or could not rea-

* United Nations, *Treaty Series*, vol. 999, p. 171 and vol. 1057, p. 407 (procès-verbal of rectification of the authentic Spanish text).

sonably have known of such loss or injury, within six (6) 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, not resulting from the operational necessity of UNMISS, to which UNMISS or any member thereof is a party and over which the courts of South Sudan 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 (30) 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 (30) 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 UNMISS, 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 UNMISS 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 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.

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

IX. Supplemental Arrangements

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

X. Liaison

60. The Special Representative, the Force Commander and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

XI. Miscellaneous provisions

61. Wherever the present Agreement refers to privileges, immunities and rights of UNMISS and to the facilities South Sudan undertakes to provide to UNMISS, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local authorities.

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

63. The present Agreement shall remain in force until the departure of the final element of UNMISS from South Sudan, except that:

(*a*) the provisions of paragraphs 50, 53, 57 and 58 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.

64. Without prejudice to existing agreements regarding their legal status and operations in South Sudan, 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 South Sudan and perform functions in relation to UNMISS.

65. Without prejudice to existing agreements regarding their legal status and operations in South Sudan, the provisions of the present Agreement may, as appropriate, be extended to specific specialized agencies and related organizations of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in South Sudan and perform functions in relation to UNMISS, provided that this is done with the written consent of the Special Representative, the specialized agency or related organization concerned and the Government.

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 Juba on the 8th August of the year 2011.

For the Government of the Republic of South Sudan	For the United Nations
[*Signed*] H.E. Deng Alor Kuol	[*Signed*] Hilde Frafjord Johnson
Minister of Foreign Affairs and International Cooperation	Special Representative of The Secretary-General

Supplemental Arrangements to the UNIMISS SOFA between the United Nations and the Government of the Republic of South Sudan

The United Nations, as represented by the Secretary-General's Special Representative in South Sudan Ms. Hilde F. Johnson, and the Government of the Republic of South

Sudan ('Government'), as represented by its Minister of Foreign Affairs and International Cooperation, H.E. Deng Alor Kuol;

Recalling the provisions of paragraph 59 of the Status of Forces Agreement between the United Nations and the Government of the Republic of South Sudan concerning the United Nations Mission in South Sudan (the 'UNMISS SOFA'), whereby the Special Representative of the Secretary-General and the Government may conclude supplemental arrangements to the present Agreement;

Hereby agree:

(i) That United Nations sub-contractors will only benefit from exemptions, including tax exemptions, in respect of activities which are related to the performance of their services in support to UNMISS, through the UNMISS main contractor.

(ii) That UNMISS will provide to the Government information regarding the activities of sub-contractors in support to UNMISS through its main contractors, to ensure that no abuses of exemptions, including tax exemptions, occur.

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 Supplemental Arrangements.

Done at Juba on the 8th August of the year 2011.

For the Government of the Republic of South Sudan	For the United Nations
[*Signed*] H.E. Deng Alor Kuol	[*Signed*] Hilde Frafjord Johnson
Minister of Foreign Affairs and International Cooperation	Special Representative of The Secretary-General

(*l*) The Government of the Kingdom of Saudi Arabia Contribution Agreement to launch the United Nations Center for Counter-Terrorism (UNCCT). New York, 19 September 2011**

The parties to this Contribution Agreement are the Government of the Kingdom of Saudi Arabia, represented by its Permanent Mission to the United Nations (hereinafter, "the Government"), and the United Nations, represented by the Department of Political Affairs and its Counter-Terrorism Implementation Task Force (hereinafter, "the CTITF"). The Government and DPA/CTITF are collectively referred to as the "Parties" and individually as a "Party".

In 2005, the Kingdom of Saudi Arabia convened the International Counter-Terrorism Conference in Riyadh, Saudi Arabia. At the Conference, The Custodian of the Two Holy Mosques, King Abdullah bin Abdul Aziz, proposed the creation of a centre to support international efforts under the aegis of the UN to enhance international counter-terrorism cooperation;

Noting with appreciation the efforts and leadership of Saudi Arabia and other Member States in countering international terrorism;

* Entered into force on 19 September 2011 by signature, in accordance with its provisions.

Reaffirming the United Nations Global Counter-Terrorism Strategy, contained in the General Assembly resolution 60/288 of 8 September 2006, and recalling the Assembly resolution 62/272 of 5 September 2008, which called for, *inter alia*, an examination in two years of progress made into implementation of the Strategy and for consideration to be given updating it to respond to changes, as provided for in those resolutions;

Recalling General Assembly resolution 64/235 of 24 December 2009 on the institutionalization of the Counter-Terrorism Implementation Task Force, and also recalling the pivotal role of the General Assembly in following up on the implementation and the updating of the Strategy;

Noting that the establishment of the UNCCT will represent the first major institutional development in support of the Counter-Terrorism Implementation Task Force (CTITF) since General Assembly resolution 64/235 in order to ensure overall coordination and coherence in the counter-terrorism efforts of the United Nations system;

Renewing our unwavering commitment to strengthening international cooperation to prevent and combat terrorism in all its forms and manifestations;

Recognizing that international cooperation and any measures undertaken by Member States to prevent and combat terrorism must fully comply with their obligations under international law, including the Charter of the United Nations, in particular the purposes and principles thereof, and relevant international conventions and protocols, in particular human rights law, refugee law and international humanitarian law;

Convinced that the United Nations is the competent organization, with universal membership, to address the issue of international terrorism;

Mindful of the need to enhance the role of the United Nations and the specialized agencies, within their mandates, in the implementation of the Strategy;

Underlining the fact that the Counter-Terrorism Implementation Task Force should continue to carry out its activities within the framework of its mandate, with policy guidance offered by Member States through the interaction with the General Assembly on a regular basis;

Strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security;

Note with appreciation the continued contribution of United Nations entities and all subsidiary organs of the Security Council to the Counter-Terrorism Implementation Task Force (CTITF);

Recall that the UN Global Counter-Terrorism Strategy acknowledged that the question of creating an International Centre to fight terrorism could be considered, as part of international efforts to enhance the fight against terrorism; and

Reaffirm the need to enhance international cooperation in countering terrorism, and in this regard recall the role of the United Nations system in promoting international cooperation and capacity building as one of the elements of the United Nations Global Counter-Terrorism Strategy (60/288) and its follow-up review resolutions (62/272 and 64/297).

Operational Parameters

I. The Kingdom of Saudi Arabia, in its capacity as initial donor, and the United Nations have agreed to collaborate on the establishment and launch the United Nations Centre for Counter-Terrorism (UNCCT) within the CTITF Office;

II. The work of the UNCCT will be supported by an Advisory Board of up to 20 Member States who will be represented, ensuring regional representation, at the Permanent Representative level at the United Nations in New York;

III. The Permanent Representative of Saudi Arabia will be Chairman of the Advisory Board for the first three years. The successor will be designated by the Advisory Board;

IV. The Chairman of the CTITF will be Executive Director of the UNCCT and *ex officio* member and Secretary of the Advisory Board;

V. The Advisory Board's guidance on programme and project proposals, and annual budget and plans, consistent with the United Nations resolutions, including the UN Global Counter-Terrorism Strategy (A/RES 60/288) and its follow-up resolutions, this contribution agreement and the United Nations Staff and Financial Regulations and Rules, will be taken into account by the Executive Director;

VI. The Executive Director of the UNCCT will be responsible for managing all operations of the Centre;

VII. The UNCCT aims to foster international cooperation and implementation of all four pillars of UN Global Counter-Terrorism Strategy at international, regional and national levels. The UNCCT will not take any action related to any intelligence exchange as this is not one of its tasks. It will, *inter alia,* focus on establishment of an electronic database on international cooperation and new trends in cyber world; promoting research linkages between think-tanks and among international, regional and national focal points and experts; series of regional and national outreach and awareness raising and printing, publication and dissemination of UNCCT documents in official UN languages, as UNCCT will support all the UN entities and subsidiary organs that pertain to CTITF;

VIII. The UNCCT work must be consistent with the United Nations Global Counter-Terrorism Strategy and its follow up resolutions; and

IX. The UNCCT work will be managed under the United Nations rules and regulations.

Financial Facts and Distribution

I. The Kingdom of Saudi Arabia will contribute an amount of US$9 million to the United Nations Department of Political Affairs Trust Fund for Counter Terrorism, under the subhead "The United Nations Centre for Counter Terrorism (UNCCT)",[*] to support the establishment, creation, and the implementation of the UNCCT during the first three years. This amount will be disbursed over a span of three years, and will be administered in accordance with the Terms of Reference of the above-referenced UN Trust Fund:

a. US$3 million annually for the first three years.

[1] The trust code will be provided after signing of this agreement.

b. US$1 million as a contingency budget, subject to a request from the Executive Director to the Permanent Mission of Saudi Arabia.

II. The first tranche of funding for year one of the UNCCT will be transferred to the United Nations within eight weeks of the signing of this Agreement to enable timely launching and initial staffing of the UNCCT. After the signing of the agreement the Executive Director will prepare a letter containing a summary of the first year's budget, draft implementation plan and proposed job descriptions of the initial posts under the UNCCT;

III. The subsequent tranches, each of US$3 Million, will be released in the first month of each following year upon the receipt of a satisfactory report for the previous year; and

IV. The release of funds for the second and third years will be subject to the overall progress of the UNCCT, an annual consultative meeting with the UNCCT Advisory Board and timely financial and administrative reporting to its donors to demonstrate that the UNCCT is achieving the aims as set out in this agreement.

Reporting

I. The CTITF shall provide the Government with the statements and report prepared in accordance with the United Nations accounting and reporting procedures, including a final narrative and a final financial statement of the UNCCT within six months after the expiration of the agreement.

II. The CTITF shall provide the Advisory Board with UNCCT biannual financial, administrative, budgetary and all other reports as may be requested by the Advisory Board.

Dispute Settlement

I. Any dispute between the United Nations and the Government relating to the interpretation and application of the present Agreement shall be settled amicably by negotiation between the Parties.

Privileges and Immunities

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

Entry into Force and Termination

I. This Agreement shall enter into force upon signature by a duly authorised representative of the H.E. Secretary-General of the United Nations and the Permanent Representative of the Kingdom of Saudi Arabia and will expire at the end of third year from the date of entry into force of this Agreement.

II. On expiration of this Agreement the funds will continue to be held by the CTITF until all expenditures on legally binding commitments incurred by the CTITF have been satisfied from such funds. Thereafter, any surplus remaining in the trust fund shall be used for the UNCCT in consultation with the Government.

In witness thereof, the duly authorized representatives of the Parties affix their signatures below on 19 September 2011.

United Nations	Government of The Kingdom of Saudi Arabia
Representative of the United Nations Secretary-General	Ambassador
[*Signed*] Mr. Jun Yamazaki	[*Signed*] Abdallah Yahya A. Al-Mouallimi
Assistant Secretary-General, Controller	Permanent Representative to the United Nations

(*m*) Memorandum of Understanding between the Government of the Republic of Serbia and the United Nations concerning contributions to the United Nations Stand-By Arrangement System. New York, 22 November 2011*

The Government of the Republic of Serbia

and

The United Nations,

Hereinafter referred to as "the Parties",

Recognizing the need to expedite the provision of certain resources to the United Nations in order to effectively implement in a timely manner, the mandate of the United Nations peacekeeping operations authorized by the Security Council,

Further recognizing that the advantages of pledging resources for peacekeeping operations contribute to enhancing flexibility and low costs,

Have reached the following understanding:

Article I. Purpose

The purpose of the present Memorandum of Understanding is to identify the resources which the Government of the Republic of Serbia has indicated that it will provide to the United Nations for use in United Nations peacekeeping operations under the conditions as specified in this Memorandum of Understanding.

Article II. Description of resources

1. The detailed description of the resources to be provided by the Government of the Republic of Serbia is set out in the Annex* to the present Memorandum of Understanding. The said Annex may be periodically changed with the consent of the Ministry of Defence of the Republic of Serbia and the United Nations Department of Peacekeeping Operations.

2. In the preparation of the Annex, as in the case of its amendments, it is necessary to observe the guidelines for the provision of resources for United Nations Peacekeeping Operations.

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* Entered into force provisionally 22 November 2011 by signature, in accordance with article V.

* Not reproduced herein.

Article III. Condition of provision

The final decision on deploying the resources, remains a national decision of the Republic of Serbia.

Article IV. Modifications

The present Memorandum of Understanding may be modified at any time by mutual consent of the Parties, in writing. The modifications shall be applied and take effect in accordance with Article V of this Memorandum of Understanding.

Article V. Entry into effect

This Memorandum of Understanding shall be provisionally applied as of the day of signature and shall enter into force on the day of the receipt of the notification by which the Republic of Serbia through diplomatic channels informs the United Nations that it has concluded the procedure necessary for this Memorandum of Understanding to enter into force in accordance with its national legislation.

Article VI. Termination

This Memorandum of Understanding may be terminated at any time by either Party. The termination takes effect three (3) months upon the day of the receipt of such a notification.

Signed in New York on 22 November 2011, in two originals, in the English language, both texts being equally authentic.

For the Government of the Republic of Serbia	For the United Nations
[*Signed*] Dragan Šutanovac	[*Signed*] Hervé Ladsous
Minister of Defence	Under-Secretary-General for Peacekeeping Operations

(*n*) Memorandum of Understanding between the Government of the Republic of Iraq and the United Nations. Baghdad, 25 December 2011*

In accordance with the principle of the sovereignty of the Republic of Iraq and based on its Constitution; and

In compliance with its commitments under the rules of International Human Rights Law, and

In view of the Government of the Republic Iraq's decision to find a peaceful and durable solution by transferring the individuals of Camp New Iraq to the temporary transitional location (Camp Liberty), in preparation for their departure from the territory of the Republic of Iraq, and

In order to facilitate the repatriation to the home countries of those wishing to do so voluntarily or resettlement in other countries, and

* Entered into force on 25 December 2011 by signature, in accordance with paragraph 9.

Considering the impartial and facilitating role of the United Nations,

The Government of the Republic of Iraq and the United Nations agree to the following:

First: Mechanisms for Transport to the (Temporary) Transit Locations

A. The Government of the Republic of Iraq shall ensure the following:

1. the safety and security of the temporary transit location in the Yamama Hotel at Abu Nousass Street;

2. the safety and security of Camp Liberty;

3. easy access for the UN to the temporary transit locations;

4. safe transportation for the movement of individuals of Camp New Iraq to the temporary transit locations.

B. The Government of the Republic of Iraq shall facilitate the performance by United Nations of the following tasks:

1. conduct of security assessments of Grizzly Base, security units' location outside the Lion's Gate, the temporary transit location in Abu Al-Nuwwas Street and in Camp Liberty (the final temporary transit location);

2. monitor the transit process from Camp New Iraq to the temporary transit locations, including the departure of the residents from Camp New Iraq, their arrival and entry into Camp Liberty;

3. monitor the temporary transit locations.

C. Those Camp New Iraq residents with passports and links to other countries will be treated as priority cases for the transfer to Camp Liberty.

Second: Verification Processes in Camp Liberty:

A. The UNHCR Verification processes aims at:

1. identifying and recording the wishes of individuals (individuals of Camp New Iraq) either to return voluntarily to the Islamic Republic of Iran or to depart to other countries;

2. verifying the identification papers of the individuals of Camp New Iraq and registering them in its data base;

3. the verification process will be completed within a period not exceeding 3 weeks from the date that all necessary equipment for the conduct of the verification process is installed at Camp Liberty.

B. The Government of the Republic of Iraq agrees that UNHCR may carry out the verification process at Camp Liberty and shall facilitate its doing so.

Third: Management of the Temporary Transit Locations

A. The Government of the Republic of Iraq shall undertake the management of the temporary transit locations, and shall ensure the following:

1. the transit locations meet humanitarian and human rights standards;

2. the security of those accommodated at the transit locations and of United Nations personnel carrying out their duties at or near those locations, to be ensured through officers trained for this purpose with the assistance of the United Nations;

3. accommodation infrastructure, hygiene facilities, medical care and facilities for religious observance while taking into consideration the "separation between the sexes" in Camp Liberty. The Government shall allow internal and external communication in accordance with the Iraqi laws;

4. the Government shall facilitate and allow the residents, at their own expense, to enter into bilateral contact with contractors for provision of life support and utilities such as water, food, communications, sanitation, and maintenance and rehabilitation equipment. The Government shall allow residents to move their individual movable assets from Camp New Iraq into Camp Liberty. The Government of the Republic of Iraq shall allow the entry of an adequate number of vehicles for transportation within the camp.

B. The Government of the Republic of Iraq shall permit the United Nations to carry out monitoring of the human rights and humanitarian situation in the temporary transit locations and shall establish procedures for the reporting of complaints.

Fourth: Procedures at Camp Liberty

A. The Government of the Republic of Iraq shall permit and facilitate UNHCR to conduct interviews with the residents of the Camp to identify their status in accordance with its mandate and its operational rules.

B. The Government of the Republic of Iraq shall facilitate consular visits to the individuals of Camp New Iraq at Camp Liberty.

Fifth: The Repatriation or Resettlement of the individuals of Camp New Iraq

A. The Government of the Republic of Iraq, with the assistance of the United Nations shall:

1. request the Islamic Republic of Iran to provide assurances to returnees;

2. facilitate the safe return to the Islamic Republic of Iran of those voluntarily wishing to return there at any time;

3. encourage diplomatic missions to repatriate individuals to the countries with which they are affiliated;

4. mobilize the international community to accept the individuals of Camp New Iraq in other countries;

5. identify persons from the Government of the Republic of Iraq who can be contacted in cases of emergency and who can be reached at anytime.

B. The Government of the Republic of Iraq shall:

1. accompany departing individuals of Camp New Iraq to the departure points or borders;

2. protect the security of United Nations personnel;

3. commit to *non-refoulement* of the individuals of Camp New Iraq to Iran.

Sixth

The Government of the Republic of Iraq shall ensure the substantial involvement of its Ministry of Human Rights in the process including the provision of a liaison officer from the Ministry of Human Rights 24/7 for referral of incidents to the Government of the Republic of Iraq for appropriate action.

Seventh

Determination of refugee status by UNHCR in accordance with its mandate does not necessarily entail conferral of refugee status by the Government of the Republic of Iraq.

Eighth

The Government of the Republic of Iraq and the United Nations shall consult with each other, at the request of either of them, on any difficulties, problems or matters of concern that may arise in the course of the implementation of this memorandum of understanding.

Ninth

This memorandum of understanding shall enter into force as of the date of its signature.

Tenth

This memorandum of understanding is concluded in two original copies in Arabic and English, each text being equally authentic.

Done in Baghdad this 25 day of December, 2011 A.D./ this _____day of _____, _____ AH

[*Signed*]	[*Signed*]
First Party The Government of the Republic of Iraq Represented by Falih Al-Fayyadh National Security Advsior	Second Party The United Nations Represented by Martin Kobler Special Representative of the Secretary-General for Iraq

3. United Nations Development Programme

(*a*) Agreement between the Government of the Arab Republic of Egypt and the United Nations Development Programme for the establishment of the UNDP Regional Centre for Arab States in Cairo, Egypt. New York, 29 July 2010*

The United Nations Development Programme (hereinafter referred to as "UNDP") and the Government of the Arab Republic of Egypt (hereinafter referred to as "the Government").

Whereas the General Assembly of the United Nations has established the United Nations Development Programme to support and supplement the national efforts of developing countries at solving the most important problems of their economic development and to promote social progress and better standards of life;

Whereas the United Nations Development Programme is supporting national processes in the Arab States region to accelerate the progress of human development with a view to eradicate poverty and bring about real improvements in people's lives and opportunities through development, equitable and sustained economic growth, and national capacity development;

Recalling that the United Nations Development Programme decided that the assistance it provides to national development efforts through its country offices, including in the Arab States region, is best supported by devolving its technical, advisory and capacity development services to the regional level;

Recalling that the Executive Board of the United Nations Development Programme endorsed the establishment of UNDP Regional Centres for each geographic bureau, including a Regional Centre for the Arab States Bureau, headed respectively by a Deputy Regional Director, with a view to strengthening UNDP development and management results as well as UN coordination results in the programme countries of the region;

Recalling that UNDP seeks to establish the Regional Centre for the Arab States within the Arab Republic of Egypt, in Cairo;

Whereas the Government of the Arab Republic of Egypt (hereinafter referred to as "the Government") welcomes the establishment of the UNDP Regional Centre for Arab States in Cairo;

Whereas the Government agrees to grant the UNDP Regional Centre for Arab States (hereinafter referred to as "UNDP/RCC-AS" or "the Centre") all the necessary privileges, immunities, exemptions and facilities to enable the Centre to perform its functions; and

Recalling that the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 and to which Egypt acceded on 17 September 1948, shall apply to the Centre, its premises, funds and assets as well as to its personnel and their official activities in the Arab Republic of Egypt;

The Government and UNDP have entered into this Agreement in a spirit of friendly cooperation.

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* Entered into force on 17 April 2011 by notification, in accordance with article XXVI.

Article I. Definitions

SECTION 1

In this Agreement, the expressions:

a) "accredited foreign missions in the Host Country" means diplomatic and consular missions and missions of international organizations based in the Arab Republic of Egypt;

b) "appropriate authorities" means such national or local governmental authorities under the laws and regulations of the Arab Republic of Egypt;

c) "archives of the UNDP/RCC-AS" means all records, correspondence, documents, manuscripts, computer records, still and motion pictures, film and sound recordings, belonging to or held by the Centre in furtherance of its functions;

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

e) "the Director of the Centre" means the head of the Centre in the Arab Republic of Egypt;

f) "the Host Country" means the Arab Republic of Egypt;

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

h) "the Parties" means UNDP and the Government;

i) "persons performing services for the Centre" means service contractors, operational experts, volunteers, consultants and juridical as well as natural persons and their employees. It includes governmental or non-governmental organizations or firms which UNDP may retain, whether as an Executing Agency or otherwise, to execute or to assist in the execution of UNDP assistance to a project, and their employees.

j) "premises of the Centre" means the facilities in the Arab Republic of Egypt used for conducting functions by the UNDP/Regional Centre for Arab States;

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

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

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

Article II. Purpose and Scope of the Agreement

SECTION 2

a) This Agreement regulates the status of the UNDP/RCC-AS premises, officials, experts on mission and persons performing services in the Host Country.

SECTION 3

a) Any building in the Arab Republic of Egypt which may be used with the concurrence of the Government for meetings, seminars, training courses, symposiums, workshops and similar activities organized by the UNDP/RCC-AS shall be temporarily included in the seat of the UNDP/RCC-AS. For all such meetings, seminars, training courses, symposiums, workshops and similar activities organized by the UNDP/RCC-AS, the present Agreement shall apply *mutatis mutandis.*

Article III. Application of the Convention

SECTION 4

The Convention shall be applicable to the UNDP/RCC-AS, its property, funds and assets, and to its officials, experts on missions and persons performing services in the Arab Republic of Egypt.

Article IV. Legal Capacity

SECTION 5

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

(i) to contract;

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

(iii) to institute judicial proceedings;

b) For the purposes of this Article, UNDP shall be represented by the Director of the UNDP/RCC-AS.

Article V. Inviolability of the UNDP/RCC-AS

SECTION 6

a) The UNDP/RCC-AS shall be inviolable and its property and assets, wherever located in the Host Country and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case immunity shall have expressly been waived in accordance with the Convention. No waiver of immunity from legal process shall extend to any measure of execution.

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

c) The premises and facilities of the UNDP/RCC-AS can be used for meetings, seminars, exhibitions and other related purposes which are organized by the Centre, the United Nations or other related organizations.

d) The premises of the UNDP/RCC-AS shall not be used in any manner incompatible with the scope and purpose of the Centre, as set forth in Article II, above.

SECTION 7

The archives of the UNDP/RCC-AS, and in general all documents and materials made available, belonging to or used by it, wherever located in the Host Country and by whomsoever held, shall be inviolable.

Article VI. Public Services

SECTION 8

a) The appropriate authorities shall facilitate, upon request by the Director of the UNDP/RCC-AS and under terms and conditions not less favourable than those accorded by the Government to any diplomatic mission, access to all public services needed by the UNDP-RC such as, but not limited to, utility, power and communications services.

b) In case where public services referred to in paragraph (*a*), above, are made available to the UNDP/RCC-AS by the competent authorities, or where the prices thereof are under their control, the rate for such services shall not exceed the lowest comparable rates accorded to diplomatic missions.

c) In case of *force majeure,* resulting in a complete or partial disruption of the above-mentioned services, the UNDP/RCC-AS shall, for the performance of its functions, be accorded the same priority given to essential governmental agencies and organs.

d) The provisions of this Article shall not prevent the reasonable application of fire protection or sanitary regulations of the Arab Republic of Egypt.

Article VII. Security

SECTION 9

a) The Government acting through the appropriate authorities shall ensure the security and protection of the UNDP RCC-AS premises throughout the Arab Republic of Egypt as is required for the effective performance of their functions and activities, and shall exercise diligence to ensure that the tranquility of the premises is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

b) If so requested by the Director of UNDP/RCC-AS, the appropriate authorities shall provide necessary assistance for the preservation of law and order in the premises and for the removal therefrom of persons as requested by the Director of UNDP/RCC-AS.

Article VIII. Exemption from Taxation

SECTION 10

The UNDP/RCC-AS, its assets, funds and other property shall enjoy:

a) Exemption from all direct and indirect taxes in connection with the official activities of the Centre; it being understood, however, that the Centre shall not request exemption from taxes which are in fact no more than charges for public utility services rendered by the competent authorities or by a corporation under the laws and regulations of the Government at a fixed rate according to the amount of services rendered, and which can be specifically identified, described and itemized.

b) Exemption from customs tax and all other taxes as well as from prohibitions and restrictions on the import or export of materials imported or exported by the UNDP/RCC-AS for its official use, it being understood that tax free imports cannot be sold in the Arab Republic of Egypt except under conditions agreed to by the appropriate authorities.

c) Exemption from all prohibitions and restrictions on the import or export of publications, still and moving pictures, films, tapes, diskettes and sound recordings imported, exported or published by the UNDP/RCC-AS within the framework of its official activities.

Article IX. Financial Transactions

Section 11

a) Without restricting the property and assets of the UNDP/RCC-AS in accordance with Article II, Section 5 of the Convention, the UNDP/RCC-AS may, in order to carry out its activities:

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

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

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

Article X. Communications

Section 12

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

Section 13

a) The Government shall secure the inviolability of the official communications of the UNDP/RCC-AS, whatever the means of the communications employed, and shall not apply any censorship to such communications.

b) The UNDP/RCC-AS shall have the right to operate communication equipment including satellite facilities and to use codes and to dispatch and receive correspondence by couriers and bags. The bags must bear visibly the United Nations emblem and may contain only documents or articles intended for official use, and the courier shall be provided with a courier certificate issued by the United Nations. The UNDP/RCC-AS and the Host Country may discuss any relevant procedures if necessary relating to operation of the communications equipment and facilities, subject to the Convention and this Agreement.

Article XI. Participants in United Nations' Meetings

SECTION 14

a) Representatives of members of the United Nations invited to meetings, seminars, training courses, symposiums, workshops and similar activities organized by the UNDP/RCC-AS shall, while exercising their functions, enjoy the privileges and immunities as set out in Article IV of the Convention.

b) The Government, in accordance with relevant United Nations principles and practices and the present Agreement, shall respect the complete freedom of expression of all participants of meetings, seminars, training courses, symposiums, workshops and similar activities organized by the UNDP/RCC-AS, to which the Convention shall be applicable. All participants and persons performing functions in connection with the meetings, seminars, training courses, symposiums, workshops and similar activities organized by the UNDP/RCC-AS shall enjoy immunity from legal process in respect of words spoken and acts done in connection therewith.

Article XII. Officials of the UNDP/RCC-AS

SECTION 15

a) Officials shall enjoy in the Host Country the same privileges, immunities and facilities as applicable to officials assigned to the mission of the United Nations Development Programme in Egypt in accordance with the Agreement concerning assistance by the United Nations Development Programme to the Government of Egypt, concluded at Cairo on 19 January 1987.

b) In particular, and taking into consideration the Convention, United Nations Officials of Egyptian nationality, assigned to the Centre, shall be exempt from all taxes on the salaries and emoluments paid to them by the United Nations. UNDP shall inform the appropriate Egyptian authorities of those Officials, and provide the Government with written confirmation of such assignment. Persons of Egyptian nationality, who do not fulfil the conditions for the exemption, shall not be entitled to exemption under this agreement from payment of taxes imposed by the Egyptian Government.

SECTION 16

a) Without prejudice to the provisions of the above Article, the Director of UNDP/RCC-AS shall enjoy during his or her residence in the Host Country privileges, immunities and facilities granted to diplomatic envoys, in accordance with international law. Furthermore, without prejudice to the provisions of the above Article, the Deputy Director of the UNDP/RCC-AS shall be accorded the privileges, immunities and facilities granted to diplomatic staff at missions accredited to the Host Country. Their names shall be included on the diplomatic list.

b) The privileges, immunities and facilities referred to above shall also be accorded to a spouse and dependent members of the family of the Centre's officials concerned.

Article XIII. Experts on Mission

SECTION 17

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

Article XIV. Persons Performing Services

SECTION 18

a) Persons performing services on behalf of the United Nations shall:

(i) be immune from legal process in respect of words spoken or written and all acts performed by them in carrying out United Nations programmes or other related activities under this Agreement. Such immunity shall continue to be accorded after termination of employment with the United Nations.

(ii) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys.

(iii) be exempt from taxation on the fees paid to them by the United Nations, unless they are nationals of the Host Country, in which case they shall not be entitled to such exemption.

b) For the purpose of enabling them to discharge their functions independently and efficiently, persons performing services on behalf of the United Nations may be accorded such other privileges, immunities and facilities as specified in Articles XII and XIII above, as may be agreed upon between the Parties, except for Egyptian nationals employed locally, who shall only enjoy immunity from legal process.

Article XV. Locally-recruited personnel assigned to hourly rates

SECTION 19

a) The terms and conditions of employment for persons recruited locally and assigned to hourly rates shall be in accordance with the relevant United Nations resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including UNDP.

b) Personnel recruited in the Arab Republic of Egypt and assigned to hourly rates shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with UNDP.

Article XVI. Waiver of Immunity

SECTION 20

The privileges and immunities accorded under the present Agreement are granted in the interests of the United Nations and not for the personal benefit of the persons concerned. The Secretary-General shall have the right and the duty to waive the immunity of any individual referred to in Articles XII, XIII, XIV and XV in any case where, in his

opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of the Organization.

Article XVII. Cooperation with the appropriate authorities

SECTION 21

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

SECTION 22

Without prejudice to the privileges and immunities referred to in this Agreement, the UNDP/RCC-AS shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the facilities, privileges and immunities accorded to persons referred to in the present Agreement.

Article XVIII. Liability

SECTION 23

The Government shall bear all risks of operations arising under this Agreement. It shall be responsible for dealing with claims in the Arab Republic of Egypt, arising from or directly attributable to the implementation of operations under present Agreement, which may be brought by third parties against the UNDP or an Executing Agency, their officials, experts on mission, persons performing services, and shall hold them harmless in respect of claims or liabilities. The foregoing provision shall not apply where the Parties are agreed that a claim or liability arises from the gross negligence or willful misconduct of the above-mentioned individuals.

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

SECTION 24

All persons referred to in this Agreement including all participants in meetings, seminars, training courses, symposiums, workshops and similar activities organized by the UNDP/RCC-AS shall have the right of unimpeded entry into, exit from, sojourn and free movement within the Host Country. Visas, entry permits or licenses, where required, shall be granted as promptly as possible and free of charge.

Article XX. Laissez-Passer

SECTION 25

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

and accept the United Nations certificate issued to persons travelling on official business of the United Nations.

Section 26

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

Section 27

Similar facilities to those specified in Section 26, above, shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer,* are confirmed by the Centre as travelling on official business of the United Nations.

Article XXI. Identification Cards

Section 28

a) The Director and Deputy Director, who hold a United Nations *laissez-passer,* shall be granted diplomatic identity cards by the appropriate authorities of the Host Country.

b) All other officials than those addressed in paragraph (*a*) above, holding a United Nations *laissez-passer,* shall be granted identity cards by the appropriate authorities of the Host Country as provided to international organizations.

c) Any other individuals holding certificates shall be granted temporary identity cards by the appropriate authorities of the Host Country subject to a minimum period of service to be agreed upon between the UNDP/RCC-AS and the Host Country.

Article XXII. United Nations Flag and Emblem

Section 29

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

Article XXIII. Social Security

Section 30

a) The Parties agree that, owing to the fact that the officials of the United Nations are subject to the United Nations Staff Regulations and Rules, including Article VI thereof, which establishes a comprehensive social security scheme, the United Nations and its officials, irrespective of nationality, shall be exempt from the laws of the host country on mandatory coverage and compulsory contributions to the social security schemes of the Host Country during their appointment with UNDP.

b) The provisions of paragraph (*a*) above shall apply *mutatis mutandis* to the members of families forming part of the household of persons referred to in paragraph (a)

above, unless they are employed or self-employed in the Host Country or receive social security benefits from the Government.

Article XXIV. Access to the Labour Market for Family Members and Issuance of Visas and Residence Permits to Household Employees

Section 31

a) The appropriate authorities shall grant working permits for spouses of officials assigned to the UNDP/RCC-AS whose duty station is in the Host Country, and their children forming part of their household who are under 21 years of age or economically dependent. Without prejudice to the foregoing, the regulations of the Host Country shall apply in connection to granting of permits for spouses and children.

b) The competent authorities shall issue visas and residence permits and any other documents, where required, to household employees of officials assigned to the Centre as speedily as possible.

Article XXV. Settlement of Disputes

Section 32

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

Article XXVI. Final Provisions

Section 33

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

b) The seat of the UNDP/RCC-AS shall not be removed from the premises unless UNDP so decides.

SECTION 34

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

SECTION 35

a) This Agreement shall enter into force upon receipt by UNDP of a notification from the Government indicating that the internal procedures necessary for the Agreement's entry into force have been completed. Pending entry into force of this Agreement, the Agreement concluded between the Arab Republic of Egypt and UNDP on 19 January 1987 relating to UNDP's assistance to the country shall apply, *mutatis mutandis*, to the UNDP/RCC-AS and its personnel.

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

c) This Agreement shall, however, remain in force for such an additional period as might be necessary for the orderly cessation of the activities of the UNDP/RCC-AS, and the resolution of any dispute between the Parties.

In witness whereof the undersigned, being the duly appointed representatives of the respective Parties, have signed this Agreement in the English and Arabic languages, in duplicate. For the purposes of interpretation and in case of conflict, the English text shall prevail.

Done at New York, this 29th day of July, 2010.

[*Signed*]	[*Signed*]
For the Government of the Arab Republic of Egypt	For the United Nations Development Programme

(*b*) Agreement between the Government of Malaysia and the United Nations Development Programme concerning the establishment of the UNDP Global Share Service Centre. Kuala Lumpur, 24 October 2011*

The Government of Malaysia as represented by the Ministry of Finance (hereinafter referred to as "the Government") and the United Nations Development Programme (hereinafter referred to as "UNDP"), hereinafter referred to singularly as "the Party" and collectively as the "Parties";

Desiring to establish favorable conditions for the establishment and operation of UNDP Global Shared Service Centre (hereinafter referred to as the "GSSC") in Malaysia, as well as activities of UNDP related thereto;

* Entered into force provisionally on 24 October 2011 and definitively on 22 November 2011 by notification, in accordance with article 16.

Wishing, in that connection, to affirm the legal status of UNDP in Malaysia for purposes of the GSSC, as well as the undertakings of UNDP and the Government with respect to UNDP for such purposes;

Have agreed as follows:

Article 1. Definitions

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

1. "basic Agreement" means: Agreement between United Nations Special Fund and the Government of the Federation of Malaya concerning assistance from the Special Fund dated 25 July 1961, Standard Agreement of 1 March 1962 and Standard Agreement on Operational Assistance of 10 May 1968;

2. "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;

3. "experts" mean persons, other than Officials and Persons Performing Services for UNDP, undertaking missions for the purposes of the Office and coming within the scope of Article VI of the Convention;

4. "office" means the UNDP GSSC in Malaysia;

5. "officials" means officials of UNDP under the terms of the Convention for the purposes of the Office and does not include persons who are both recruited locally and assigned to hourly rates;

6. "premises of the Office" means the buildings or parts of buildings used by the Office to perform its functions;

7. "persons Performing Services for UNDP" means, other than Officials and Experts, operational experts, volunteers, consultants and juridical as well as natural persons and their employees, engaged by UNDP to perform services in the execution of the Office's functions, and includes nongovernmental organizations or firms which UNDP may retain to execute or to assist in the execution of the Office's functions under this Agreement, and their employees.

Article 2. Undertakings of UNDP

1. UNDP shall establish the Office for the purposes of providing administrative services for UNDP worldwide, and shall, at its own expense and discretion in accordance with its own regulations, rules, policies and procedures, assign Officials to the Office, as well as support its operation as set forth herein.

2. The Office shall be an integral part of UNDP and serve as an outpost of UNDP Headquarters and references to UNDP herein, wherever the context requires, are understood to include the Office. It shall be under the control and authority of UNDP, which shall have the right to make internal regulations applicable to the Office and to establish the necessary conditions for its operation.

3. UNDP may appoint or assign, in accordance with its own regulations, rules, policies and procedures, Officials, Experts and Persons Performing Services for UNDP, as is deemed necessary by UNDP, to staff or provide support to the work of the Office.

4. UNDP shall notify the Government periodically of the names of Officials. UNDP shall also notify the Government of any changes in their status.

Article 3. Undertakings of the Government

1. Without prejudice to the Basic Agreement, the Government shall provide or make available to UNDP, as mutually agreed upon, appropriate office premises for the Office, as well as the facilities and services as set forth herein and in Appendix A* of this Agreement, including:

a. upon application by UNDP, the issuance of all government-issued permits and licenses for the importation of supplies , equipment and other materials that UNDP deems necessary under this Agreement for the operation of the Office, as well as the facilitation and assistance with respect to issuance of all other permits and licenses for these purposes;

b. basic utility costs, such as water and electricity;

c. assistance in identifying agents to help UNDP in the location and/or provision of suitable housing accommodation for internationally recruited personnel; and

d. access to facilities for receiving medical care and hospitalization by Officials, Experts and Persons Performing Services for the Office.

2. The appropriate authorities of the Government shall exercise due diligence to ensure the security and protection of the Office, and to ensure that the security and tranquility of the Office is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

3. The Government shall facilitate:

a. the entry into and departure from Malaysia of the Officials, Experts, Persons Performing Services for UNDP, representatives of Members, their spouses and dependants, and other persons invited by the Office, for official business;

b. visas that may be required for persons referred to in paragraph (a) above shall be granted free of charge and without delay. No activity performed by any such person referred to in paragraph (a) above, in his/her capacity shall constitute a reason for preventing his/her entry into Malaysia or for requiring him/her to leave Malaysia except as provided for under the Convention.

4. In the event that the Government considers that there are any issues of national security, national interest, public order or public health that will affect its ability to adhere to the Undertakings in this Agreement, the Government will promptly notify UNDP and the Parties shall mutually agree on a way forward.

Article 4. Legal Status of UNDP

The Government shall, for the purposes of this Agreement, guarantee to UNDP the independence and freedom of action belonging to it as a subsidiary organ of the United Nations under the Convention. The Government recognizes the juridical personality of UNDP and it shall have the capacity to contract, to acquire and dispose immovable and movable property and to institute and be party to legal proceedings.

* Appendix A on Facilities and Services not reproduced herein.

Article 5. Privileges and Immunities

1. Both Parties agree that the terms of the Basic Agreement on privileges and immunities shall apply to UNDP for purpose of this Agreement.

2 Spouses of internationally recruited Officials, who are not nationals or permanent residents of Malaysia, shall be allowed to access gainful employment in Malaysia subject to the laws and regulations of Malaysia.

Article 6. Laissez-Passer

1. The Government and other appropriate authorities of the Country shall recognize and accept the United Nations Laissez-Passer issued to Officials as a valid travel document equivalent to a passport.

2. The Government shall provide multiple entry visas of no less than one year duration to holders of the United Nations Laissez-Passer designated in writing by the Head of Office as requiring such a visa. Applications for visas from other holders of a United Nations Laissez-Passer shall be dealt with as speedily as possible.

Article 7. Facilities in Respect of Communications

Without prejudice to the rights of UNDP under the Convention, the Office shall have the right to operate radio and other telecommunication equipment, whether on United Nations registered frequencies in accordance with any agreement with the United Nations for that purpose or those allocated by the Government.

Article 8. Waiver of Privileges and Immunities

1. The privileges and immunities accorded under this Agreement are granted in the interests of UNDP, and not for the personal benefit of the persons concerned. The Secretary-General shall have the right and the duty to waive the immunity of any Official in any case where, in the opinion of the Secretary-General, such immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization.

2. UNDP and its Officials shall cooperate at all times with the appropriate authorities of the Government 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 by this Agreement.

Article 9. Respect for the Laws and Regulations of Malaysia

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 Malaysia. They also have the duty not to interfere in the internal affairs of Malaysia.

Article 10. Supplementary Agreements

The Parties may enter into such supplementary agreements as may be necessary.

Article 11. Confidentiality

1. Each Party, in accordance with its own regulations, rules, policies and procedures, shall undertake to observe the confidentiality of documents, information and other data received or supplied to the other Party during the period of the implementation of this Agreement or any other agreements made pursuant to this Agreement.

2. Both Parties agree that the provisions of this Article shall continue to be binding between the Parties notwithstanding the termination of this Agreement.

Article 12. Notices

Any notice, approval, consent, request or other communication required or permitted to be given or made under this Agreement shall be in writing and delivered to the address of the Government or UNDP, as the case may be, shown below or to such other address, as either Party may have notified the sender and shall unless otherwise provided herein be deemed to be duly given or made, in the case of delivery in person, when delivered to the recipient at such address which is duly acknowledge:

(i) to the Government:

Accountant General of Malaysia
Accountant General's Department of Malaysia
Level 8, Ministry of Finance Complex
No. 1; Persiaran Perdana, Precinct 2
Federal Government Administrative Centre
62594 Putrajaya
Malaysia
Tel No: 603–8882 1000
Fax No: 603–8889 5821

(ii) to UNDP:

United Nations Development Programme
Wisma UN, Block C, Kompleks Pejabat Damansara
Jalan Dungun, Damansara Heights
50490 Kuala Lumpur
Tel No: 603 2095 9122/ 20959133
Fax No: 603 2095 2870

Article 13. Revision, Modification and Amendment

1. Either Party may request in writing a revision, modification or amendment of all or any part of this Agreement.

2. Any revision, modification or amendment agreed to by the Parties shall be made in writing and shall form an integral part of this Agreement.

3. Such revision, modification or amendment shall come into force on such date as may be determined by the Parties.

4. Any revision, modification or amendment shall not prejudice the rights and obligations arising from or based on this Agreement prior or up to the date of such revision, modification or amendment.

Article 14. Settlement of Disputes

1. Any dispute between the Parties concerning the interpretation or implementation of this Agreement that is not settled by consultation, negotiation or other agreed method of settlement, shall, at the request of either Party, be referred to a tribunal of three arbitrators, one to be appointed by the Government, one to be appointed by UNDP and the third to be appointed by the two arbitrators, who shall be the chairman. If, within thirty days of the request for arbitration, either Party has not appointed an arbitrator or if, within fifteen days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator.

2. The procedure of arbitration shall be determined by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article 15. Other Agreements and Arrangements

1. This Agreement shall not affect:

a. the role or status of the UNDP Country Office based in Malaysia and operating in accordance with the Basic Agreement, nor its Officials, Experts and Persons Performing Services for it;

b. the status of the UNDP Resident Representative based in Malaysia as the principal representative of UNDP in Malaysia for purposes of the Basic Agreement.

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

Article 16. Entry into Force and Duration

1. This Agreement shall enter into force upon date of receipt by UNDP of a notification from the Government indicating that the internal procedures necessary for the Agreement's entry into force have been completed.

2. This Agreement shall apply, on an interim basis, as of the date of its signature.

3. This Agreement shall remain in force for a period of 15 years, with an option for the Parties to agree to extend the term, unless sooner terminated by either Party as provided under Article 17 below.

Article 17. Termination

Either Party may terminate this Agreement by notifying the other Party of its intention to terminate this Agreement by a notice in writing through diplomatic channels, at least twelve (12) months prior to its intention to do so. Notwithstanding the foregoing, any termination of this Agreement shall be without prejudice to:

1. the orderly cessation of any ongoing UNDP activities and the resolution of any disputes between the Parties; and

2. subject to the settlement of any outstanding obligations incurred prior to the date of termination of this Agreement.

In witness whereof the undersigned, duly appointed representatives of the Government and United Nations Development Programme, respectively, have on behalf of the Parties signed the present Agreement in the English Language in two copies at Kuala Lumpur this twenty-fourth day of October 2011.

For the Government of Malaysia	For the United Nations Development Programme
[*Signed*] Tan Sri Dr. Wan Abd Aziz Bin Wan Abdullah	[*Signed*] Mr. Kamal Malhotra
Secretary General Ministry of Finance Malaysia	Resident Representative United Nations Development Programme for Malaysia, Singapore and Brunei

4. United Nations Population Fund

(*a*) Agreement between the United Nations Population Fund and the Government of the Republic of Turkey for the Establishment of the UNFPA Eastern Europe and Central Asia Regional Office in Istanbul, Turkey. New York, 1 July 2010*

The United Nations Population Fund (hereinafter referred to as "UNFPA") and the Government of the Republic of Turkey (hereinafter referred to as "the Government").

Whereas the General Assembly of the United Nations established UNFPA pursuant to General Assembly resolution 3019 (XXVII) of 18 December 1972;

Whereas UNFPA is assisting Governments in the region of Eastern Europe and Central Asia with respect to the formulation, adoption and implementation of their population policies and development strategies in national development plans;

Whereas the Executive Board of the United Nations Development Programme ("UNDP") and UNFPA, in its decision 2007/43 of 14 September 2007, approved a new organizational structure for UNFPA, including a Regional Office of UNFPA for Eastern Europe and Central Asia;

Whereas the Government welcomes the establishment of the UNFPA Eastern Europe and Central Asia Regional Office in the city of Istanbul;

Whereas the Government agrees to grant the UNFPA Eastern Europe and Central Asia Regional Office all the necessary privileges, immunities, exemptions and facilities to enable the Office to perform its functions; and

Recalling that the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 and to which

* Entered into force on January 2011 by notification, in accordance with article XXIV.

the Government acceded on 22 August 1950, shall apply to the Eastern Europe and Central Asia Regional Office, its premises, funds and assets as well as to its personnel and their official activities in the Republic of Turkey;

The Government and UNFPA have entered into this Agreement in a spirit of friendly cooperation.

Article I. Definitions

Section 1

In this Agreement, the expressions:

a) "accredited foreign missions in the Host Country" means diplomatic and consular missions and missions of international organizations based in the Host Country;

b) "appropriate authorities" means such national or local governmental authorities under the laws and regulations of the Host Country;

c) "archives of the Office" means all records, correspondence, documents, manuscripts, computer records, still and motion pictures, film and sound recordings, belonging to or held by the Office in furtherance of its functions;

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

e) "the Office" means the UNFPA Eastern Europe and Central Asia Regional Office;

f) "the Director of the Office" means the head of the Office in the Host Country;

g) "the Host Country" means Turkey;

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

i) "the Parties" means UNFPA and the Government;

j) "persons performing services for the Office" means service contractors, consultants and persons retained on special services agreements;

k) "premises of the Office" means the facilities in the Host Country used for conducting functions by the Office;

l) "property of the Office" means all property, including funds, income and other assets belonging to the Office or held or administered by the Office in furtherance of the functions of the Office;

m) "the Secretary-General" means the Secretary-General of the United Nations; and

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

Article II. Purpose and Scope of the Agreement

Section 2

The seat of the Office shall be established in Istanbul, in the Republic of Turkey to carry out the functions of a Regional Office of UNFPA for Eastern Europe and Central Asia. This Agreement regulates the status of the Office premises, officials, experts on mission and persons performing services for the Office in the Host Country.

Section 3

Any building in the Host Country which may be used with the concurrence of the Government for meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office shall be temporarily included in the seat of the Office. For all such meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office, the present Agreement shall apply *mutatis mutandis*.

Article III. Application of the Convention

Section 4

The Convention, as acceded to by the Republic of Turkey, shall be applicable to the Office, its property, funds and assets, and to its officials, experts on missions and persons performing services for the Office in the Host Country.

Article IV. Legal Capacity

Section 5

a) The United Nations, acting through UNFPA, shall have the capacity:

(*i*) to contract;

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

(*iii*) to institute judicial proceedings;

b) For the purposes of this Article, UNFPA shall be represented by the Director of the Office.

Article V. Inviolability of the Office

Section 6

a) The Office shall be inviolable. The Office, its property and assets, wherever located in the Host Country and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case immunity shall have expressly been waived in accordance with the Convention. No waiver of immunity from legal process shall extend to any measure of execution.

b) No officer or official of the Host Country or person exercising any public authority within the Host Country, shall enter the Office premises to perform any duties therein except with the consent of, and under conditions approved by the Director of the Office. In case of a fire or other emergency requiring prompt protection action, the consent of the

Director of the Office to any necessary entry into the premises shall be presumed if he or she cannot be reached in time.

c) The premises of the Office can be used, in accordance with Article II, section 3, of this Agreement, for meetings, seminars, exhibitions and other related purposes which are organized by the Office, the United Nations, Specialized Agencies of the United Nations as well as other international, intergovernmental organizations brought into a relationship with the United Nations.

d) The premises of the Office shall not be used in any manner incompatible with the scope and purpose of the Office, as set forth in Article II, above.

SECTION 7

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

Article VI. Public Services

SECTION 8

a) The appropriate authorities shall facilitate, upon request by the Director of the Office and under terms and conditions not less favourable than those accorded by the Government to any diplomatic mission, access to all public services needed by the Office such as, but not limited to, utility, power and communications services.

b) In case where public services referred to in paragraph (*a*), above, are made available to the Office by the competent authorities, or where the prices thereof are under their control, the rate for such services shall not exceed the lowest comparable rates accorded to diplomatic missions.

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

d) The provisions of this Article shall not prevent the reasonable application of fire protection or sanitary regulations of the Host Country.

Article VII. Security

SECTION 9

a) The Government acting through the appropriate authorities shall ensure the security and protection of the Office premises throughout the Host Country as is required for the effective performance of the functions and activities of the Office, and shall exercise diligence to ensure that the tranquility of the premises is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

b) If so requested by the Director of the Office, the appropriate authorities shall provide necessary assistance for the preservation of law and order in the premises and for the removal therefrom of offenders as requested by the Director of the Office.

Article VIII. Exemption from Taxation

SECTION 10

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

a) exemption from all direct taxes as well as exemption from value added tax and property tax in connection with the official activities of the Office; it being understood, however, that the Office shall not request exemption from taxes which are in fact no more than charges for public utility services rendered by the competent authorities or by a corporation under the laws and regulations of the Government at a fixed rate according to the amount of services rendered, and which can be specifically identified, described and itemized.

b) exemption from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.

c) exemption from all prohibitions and restrictions on the import or export of its publications, including still and moving pictures, films, tapes, diskettes and sound recordings.

Article IX. Financial Transactions

SECTION 11

Without restricting the property and assets of the Office in accordance with Article II, Section 5 of the Convention, the Office may, in order to carry out its activities:

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

ii) freely transfer its funds and currency to or from any other country, or within the Host Country, and convert any currency held by it into any other currency;

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

Article X. Communications

SECTION 12

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

SECTION 13

a) The Government shall secure the inviolability of the official communications of the Office, whatever the means of the communications employed, and shall not apply any censorship to such communications.

b) The Office shall have the right to operate communication equipment including satellite facilities and to use codes and to dispatch and receive correspondence by couriers and bags. The bags must bear visibly the United Nations emblem and may contain only documents or articles intended for official use, and the courier shall be provided with a courier certificate issued by the United Nations. The Office and the Host Country may discuss any relevant procedures if necessary relating to operation of the communications equipment and facilities, subject to the Convention and this Agreement.

Article XI. United Nations Meetings

Section 14

The United Nations and the Government shall conclude appropriate conference agreements in accordance with the relevant principles and practices of the United Nations for meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office.

Article XII. Officials of the Office

Section 15

a) Officials shall enjoy in the Host Country the following privileges, immunities and facilities:

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

ii) immunity from seizure of their personal and official effects and baggage;

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

iv) exemption from any national service obligations, including, but not limited to, military service, in the Host Country;

v) exemption, for themselves and for their spouses and dependent members of their families, from immigration restrictions or alien registration procedures;

vi) in regard to foreign exchange, including holding accounts in foreign currencies, enjoyment of the same facilities as are accorded to members of diplomatic missions accredited to the Host Country;

vii) the same protection and repatriation facilities with respect to themselves, their spouses, and dependent members of their families as are accorded in times of international crisis to diplomatic envoys;

viii) the right to import for their personal use, free of customs duties and all taxes (including value added and sales tax), prohibitions and restrictions on imports:

within six months of taking up residence in the Host Country, their furniture, household and personal effects and the right to re-export such materials without

customs duty or taxes on the termination of their functions in the Host Country. Such material shall not be for sale in the local market without paying customs duty or any other applicable tax. The Government shall give due consideration to any request for extension or waiver of the six month period that is substantiated by the Official concerned and supported by the UNFPA;

in accordance with existing Government regulations, one automobile at a time. Automobiles imported in accordance with this provision may be sold in the Host Country at any time after their importation, subject to the applicable regulations of the Host Country;

reasonable quantities of certain articles including liquor, tobacco and foodstuff, for personal use or consumption and not for gift or sale, in accordance with existing Government regulations;

ix) exemption from vehicles tax and related taxes;

x) officials shall be entitled, on the termination of their functions in the Host Country, to export their furniture and personal effects, including motor vehicles, without duties and taxes;

xi) for themselves and members of their families, on terms not less favourable than citizens of the Host Country, the right of access to universities and other institutions of higher education, in accordance with the applicable entry requirements for such institutions, for the purpose of obtaining graduate and postgraduate degrees and related training leading to the attainment of the relevant educational and professional qualifications required in the Host Country.

b) Officials of the nationality of the Host Country or with permanent residency status in the Host Country shall enjoy only those privileges and immunities provided for in Section 18 of the Convention, subject to the reservations established by the Host Country upon its accession to the Convention.

c) In accordance with the provisions of Section 17 of the Convention, the appropriate authorities shall be periodically informed of the names of the Officials assigned to the Office.

Section 16

a) Without prejudice to the provisions of this Article, the Director and the Deputy Director of the Office as well as their spouses and dependent family members shall enjoy during their residence in the Host Country privileges, immunities and facilities granted to diplomatic envoys, in accordance with international law. Their names shall be included on the diplomatic list.

Article XIII. Experts on Mission

Section 17

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

Article XIV. Persons Performing Services for the Office

SECTION 18

The Government shall grant all persons performing services for the Office immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the United Nations, and such immunity shall continue to be accorded after termination of their engagement with the Office. They shall be accorded such other facilities as may be necessary for the independent performance of their functions for the Office. Such immunity shall not apply to any act taken by such persons outside the performance of their services for the United Nations.

Article XV. Waiver of Immunity

SECTION 19

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

Article XVI. Cooperation with the appropriate authorities

SECTION 20

Without prejudice to the privileges and immunities accorded by this Agreement, all persons enjoying such privileges and immunities must comply with the laws and regulations of the Host Country, and not to interfere in the internal affairs of the Host Country.

SECTION 21

Without prejudice to the privileges and immunities referred to in this Agreement, the Office shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the observance of the laws of the Host Country and prevent the occurrence of any abuse in connection with the facilities, privileges and immunities accorded to persons referred to in the present Agreement.

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

SECTION 22

In respect of all officials of the Office and persons performing services for the Office the Government shall take all necessary measures to facilitate their entry into, exit from, sojourn to and free movement within the Host Country with the exception of restricted areas designated pursuant to national legislation. Visas, entry permits or licenses, where required, shall be granted as promptly as possible and free of charge.

Article XVIII. Laissez-Passer

Section 23

The Government shall recognize and accept the United Nations Laissez-Passer issued by the United Nations as a valid travel document equivalent to a passport. In accordance with the provisions of Section 26 of the Convention, the Government shall also recognize and accept the United Nations Certificate issued to persons travelling on official business of the United Nations.

Section 24

Applications for the necessary permits or visas, where required, by officials holding the United Nations Laissez-Passer and their dependents, shall be dealt with as speedily as possible and free of charge. In addition, such persons shall be granted facilities for speedy travel. The Government further agrees to issue any required visa on the United Nations Laissez-Passer or national passport.

Section 25

Similar facilities to those specified in Section 24, above, shall be accorded to experts and other persons who, though not the holders of United Nations Laissez-Passer, are confirmed by the Office as travelling on official business of the United Nations.

Article XIX. Identification Cards

Section 26

a) All officials of the Office shall be granted identity cards by the appropriate authorities of the Host Country as provided to international organizations.

b) Any other individuals holding United Nations Certificates shall be granted temporary identity cards by the appropriate authorities of the Host Country subject to a minimum period of service to be agreed upon between the Office and the Host Country.

Article XX. United Nations Flag and Emblem

Section 27

The Office shall have the right to display the emblem of the United Nations or UNFPA and the flag of the United Nations on its premises, vehicles, aircraft and vessels.

Article XXI. Social Security

Section 28

a) The Parties agree that, owing to the fact that the officials of the United Nations are subject to the United Nations Staff Regulations and Rules, including Article VI thereof, which establishes a comprehensive social security scheme, the United Nations and its officials, irrespective of nationality, shall be exempt from the laws of the host country on mandatory coverage and compulsory contributions to the social security schemes of the Host Country during their appointment with UNFPA.

b) The provisions of paragraph (*a*) above shall apply *mutatis mutandis* to the members of families forming part of the household of persons referred to in paragraph a) above, unless they are employed or self-employed in the Host Country or receive social security benefits from the Government.

Article XXII. Access to the Labour Market for Family Members and Issuance of Visas and Residence Permits to Household Employees

Section 29

a) The appropriate authorities shall grant working permits for spouses of officials assigned to the Office whose duty station is in the Host Country, and their children forming part of their household who are under 21 years of age or economically dependent. The regulations of the Host Country shall apply in connection to granting of such permits. Insofar as they engage in gainful occupation, privileges and immunities shall not apply with respect to such occupation.

b) The competent authorities shall issue visas and residence permits and any other documents, where required, to household employees of officials assigned to the Office as speedily as possible.

Article XXIII. Settlement of Disputes

Section 30

a) The United Nations shall make provisions for agreed modes of settlement of:

i) disputes arising out of contracts and disputes of a private law character to which the United Nations is a party; and

ii) disputes involving an official of or an expert on mission for UNFPA who, by reason of his or her official position, enjoys immunity, if such immunity has not been waived.

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

Article XXIV. Final Provisions

SECTION 31

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

b) The seat of the Office shall not be removed from the premises unless UNFPA so decides.

SECTION 32

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

SECTION 33

a) This Agreement, and any amendment thereto pursuant to Section 32, shall enter into force on the first day of the month following the day the Government has notified the United Nations that the necessary constitutional conditions for its entry into force have been fulfilled.

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

c) This Agreement shall, however, remain in force for such an additional period as might be necessary for the orderly cessation of the activities of the Office, and the resolution of any dispute between the Parties.

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

Done at New York, this 1st day of July, 2010

[*Signed*]	[*Signed*]
For the United Nations Population Fund	For the Government of the Republic of Turkey

(*b*) Agreement between the Government of the Arab Republic of Egypt and the United Nations Population Fund for the establishment of UNFPA Arab States regional office in Cairo, Egypt. New York, 29 July 2010*

The United Nations Population Fund (hereinafter referred to as "UNFPA") and the Government of the Arab Republic of Egypt (hereinafter referred to as "the Government").

Whereas the General Assembly of the United Nations established UNFPA pursuant to General Assembly resolution 3019 (XXVII) of 18 December 1972;

Whereas in September 1994, the Government hosted the International Conference on Population and Development ("ICPD") in Cairo, resulting in the ICPD Programme of Action;

Whereas UNFPA is assisting Governments in the Arab States region with respect to the formulation, adoption and implementation of their population policies and development strategies in national development plans;

Whereas the Executive Board of the United Nations Development Programme ("UNDP") and UNFPA, in its decision 2007/43 of 14 September 2007, approved a new organizational structure for UNFPA, including a Regional Office of UNFPA for the Arab States to be established in Cairo, the Arab Republic of Egypt;

Whereas the Government welcomes the establishment of the UNFPA Arab States Regional Office in Cairo;

Whereas the Government agrees to grant the UNFPA Arab States Regional Office (hereinafter referred to as "the Office") all the necessary privileges, immunities, exemptions and facilities to enable the Office to perform its functions; and

Recalling that the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 and to which Egypt acceded on 17 September 1948, shall apply to the Office, its premises, funds and assets as well as to its personnel and their official activities in the Arab Republic of Egypt;

The Government and UNFPA have entered into this Agreement in a spirit of friendly cooperation.

Article I. Definitions

Section 1

In this Agreement, the expressions:

a) "accredited foreign missions in the Host Country" means diplomatic and consular missions and missions of international organizations based in the Arab Republic of Egypt;

b) "appropriate authorities" means such national or local governmental authorities under the laws and regulations of the Arab Republic of Egypt;

c) "archives of the Office" means all records, correspondence, documents, manuscripts, computer records, still and motion pictures, film and sound recordings, belonging to or held by the Office in furtherance of its functions;

* Entered into force on 17 April 2011 by notification, in accordance with section 35.

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

e) "the Director of the Office" means the head of the Office in the Arab Republic of Egypt;

f) "the Host Country" means the Arab Republic of Egypt;

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

h) "the Parties" means UNFPA and the Government;

i) "persons performing services for the Office" means service contractors, operational experts, volunteers, consultants and juridical as well as natural persons and their employees. It includes governmental or non-governmental organizations or firms which UNFPA may retain, whether as an Executing Agency or otherwise, to execute or to assist in the execution of UNFPA assistance to a project, and their employees;

j) "premises of the Office" means the facilities in the Arab Republic of Egypt used for conducting functions by the Office;

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

1) "the Secretary-General" means the Secretary-General of the United Nations; and

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

Article II. Purpose and Scope of the Agreement

Section 2

This Agreement regulates the status of the Office premises, officials, experts on mission and persons performing services in the Host Country.

Section 3

Any building in the Arab Republic of Egypt which may be used with the concurrence of the Government for meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office shall be temporarily included in the seat of the Office. For all such meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office, the present Agreement shall apply *mutatis mutandis*.

Article III. Application of the Convention

SECTION 4

The Convention shall be applicable to the Office, its property, funds and assets, and to its officials, experts on missions and persons performing services in the Arab Republic of Egypt.

Article IV. Legal Capacity

SECTION 5

a) The United Nations, acting through UNFPA, shall have the capacity:

(i) to contract;

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

(iii) to institute judicial proceedings;

b) For the purposes of this Article, UNFPA shall be represented by the Director of the Office.

Article V. Inviolability of the Office

SECTION 6

a) The Office shall be inviolable and its property and assets, wherever located in the Host Country and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case immunity shall have expressly been waived in accordance with the Convention. No waiver of immunity from legal process shall extend to any measure of execution.

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

c) The premises and facilities of the Office can be used for meetings, seminars, exhibitions and other related purposes which are organized by the Office, the United Nations or other related organizations.

d) The premises of the Office shall not be used in any manner incompatible with the scope and purpose of the Office, as set forth in Article II, above.

SECTION 7

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

Article VI. Public Services

SECTION 8

a) The appropriate authorities shall facilitate, upon request by the Director of the Office and under terms and conditions not less favourable than those accorded by the Government to any diplomatic mission, access to all public services needed by the Office such as, but not limited to, utility, power and communications services.

b) In case where public services referred to in paragraph (*a*), above, are made available to the Office by the competent authorities, or where the prices thereof are under their control, the rate for such services shall not exceed the lowest comparable rates accorded to diplomatic missions.

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

d) The provisions of this Article shall not prevent the reasonable application of fire protection or sanitary regulations of the Arab Republic of Egypt.

Article VII. Security

SECTION 9

a) The Government acting through the appropriate authorities shall ensure the security and protection of the Office premises throughout the Arab Republic of Egypt as is required for the effective performance of their functions and activities, and shall exercise diligence to ensure that the tranquility of the premises is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

b) If so requested by the Director of the Office, the appropriate authorities shall provide necessary assistance for the preservation of law and order in the premises and for the removal therefrom of persons as requested by the Director of the Office.

Article VIII. Exemption from Taxation

SECTION 10

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

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

b) exemption from customs tax and all other taxes as well as from prohibitions and restrictions on the import or export of materials imported or exported by the Office for its official use, it being understood that tax free imports cannot be sold in the Arab Republic of Egypt except under conditions agreed to by the appropriate authorities.

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

Article IX. Financial Transactions

Section 11

Without restricting the property and assets of the Office in accordance with Article II, Section 5 of the Convention, the Office may, in order to carry out its activities:

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

ii) freely transfer its funds and currency to or from any other country, or within the Host Country, and convert any currency held by it into any other currency;

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

Article X. Communications

Section 12

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

Section 13

a) The Government shall secure the inviolability of the official communications of the Office, whatever the means of the communications employed, and shall not apply any censorship to such communications.

b) The Office shall have the right to operate communication equipment including satellite facilities and to use codes and to dispatch and receive correspondence by couriers and bags. The bags must bear visibly the United Nations emblem and may contain only documents or articles intended for official use, and the courier shall be provided with a courier certificate issued by the United Nations. The Office and the Host Country may discuss any relevant procedures if necessary relating to operation of the communications equipment and facilities, subject to the Convention and this Agreement.

Article XI. Participants in United Nations' Meetings

Section 14

a) Representatives of members of the United Nations invited to meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office shall, while exercising their functions, enjoy the privileges and immunities as set out in Article IV of the Convention.

b) The Government, in accordance with relevant United Nations principles and practices and the present Agreement, shall respect the complete freedom of expression

of all participants of meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office, to which the Convention shall be applicable. All participants and persons performing functions in connection with the meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office shall enjoy immunity from legal process in respect of words spoken and acts done in connection therewith.

Article XII. Officials of the Office

Section 15

a) Officials shall enjoy in the Host Country the same privileges, immunities and facilities as applicable to officials assigned to the mission of the United Nations Development Programme in Egypt in accordance with the Agreement concerning assistance by the United Nations Development Programme to the Government of Egypt, concluded at Cairo on 19 January 1987.

b) In particular, and taking into consideration the Convention, United Nations Officials of Egyptian nationality, assigned to the Office, shall be exempt from all taxes on the salaries and emoluments paid to them by the United Nations. The UNFPA shall inform the appropriate Egyptian authorities of those Officials, and provide the Government with written confirmation of such assignment. Persons of Egyptian nationality, who do not fulfil the conditions for the exemption, shall not be entitled to exemption under this agreement from payment of taxes imposed on them by the Egyptian Government.

Section 16

a) Without prejudice to the provisions of the above Article, the Director of the Office shall enjoy during his or her residence in the Host Country privileges, immunities and facilities granted to diplomatic envoys, in accordance with international law. Furthermore, without prejudice to the provisions of the above Article, the Deputy Director of the Office shall be accorded the privileges, immunities and facilities granted to diplomatic staff at missions accredited to the Host Country. Their names shall be included on the diplomatic list.

b) The privileges, immunities and facilities referred to above shall also be accorded to a spouse and dependent members of the family of the Office's officials concerned.

Article XIII. Experts on Mission

Section 17

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

Article XIV. Persons Performing Services

Section 18

a. Persons performing services on behalf of the United Nations shall:

(a) be immune from legal process in respect of words spoken or written and all acts performed by them in carrying out United Nations programmes or other related

activities under this Agreement. Such immunity shall continue to be accorded after termination of employment with the United Nations. Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys.

(b) be exempt from taxation on the fees paid to them by the United Nations, unless they are nationals of the Host Country, in which case they shall not be entitled to such exemption.

b. For the purpose of enabling them to discharge their functions independently and efficiently, persons performing services on behalf of the United Nations may be accorded such other privileges, immunities and facilities as specified in Articles XII and XIII above, as may be agreed upon between the Parties, except for Egyptian nationals employed locally, who shall only enjoy immunity from legal process.

Article XV. Locally-recruited personnel assigned to hourly rates

SECTION 19

a) The terms and conditions of employment for persons recruited locally and assigned to hourly rates shall be in accordance with the relevant United Nations resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including UNFPA.

b) Personnel recruited in the Arab Republic of Egypt and assigned to hourly rates shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with UNFPA.

Article XVI. Waiver of Immunity

SECTION 20

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

Article XVII. Cooperation with the appropriate authorities

SECTION 21

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

Section 22

Without prejudice to the privileges and immunities referred to in this Agreement, the Office shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the facilities, privileges and immunities accorded to persons referred to in the present Agreement.

Article XVIII. Liability

Section 23

The Government shall bear all risks of operations arising under this Agreement. It shall be responsible for dealing with claims in the Arab Republic of Egypt, arising from or directly attributable to the implementation of operations under the present Agreement, which may be brought by third parties against the UNFPA or an Executing Agency, their officials, experts on mission, persons performing services, and shall hold them harmless in respect of such claims or liabilities. The foregoing provision shall not apply where the Parties are agreed that a claim or liability arises from the gross negligence or willful misconduct of the above-mentioned individuals.

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

Section 24

All persons referred to in this Agreement including all participants in meetings, seminars, training courses, symposiums, workshops and similar activities organized by the Office shall have the right of unimpeded entry into, exit from, sojourn and free movement within the Host Country. Visas, entry permits or licenses, where required, shall be granted as promptly as possible and free of charge.

Article XX. Laissez-passer

Section 25

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

Section 26

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

SECTION 27

Similar facilities to those specified in Section 26, above, shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer,* are confirmed by the Office as travelling on official business of the United Nations.

Article XXI. Identification Cards

SECTION 28

a) The Director and Deputy Director, who hold a UN Laissez Passer, shall be granted diplomatic identity cards by the appropriate authorities of the Host Country.

b) All other officials than those addressed in paragraph (*a*) above, holding a UN Laissez Passer, shall be granted identity cards by the appropriate authorities of the Host Country as provided to international organizations.

c) Any other individuals holding certificates shall be granted temporary identity cards by the appropriate authorities of the Host Country subject to a minimum period of service to be agreed upon between the Office and the Host Country.

Article XXII. United Nations Flag and Emblem

SECTION 29

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

Article XXIII. Social Security

SECTION 30

a) The Parties agree that, owing to the fact that the officials of the United Nations are subject to the United Nations Staff Regulations and Rules, including Article VI thereof, which establishes a comprehensive social security scheme, the United Nations and its officials, irrespective of nationality, shall be exempt from the laws of the host country on mandatory coverage and compulsory contributions to the social security schemes of the Host Country during their appointment with UNFPA.

b) The provisions of paragraph (*a*) above shall apply *mutatis mutandis* to the members of families forming part of the household of persons referred to in paragraph a) above, unless they are employed or self-employed in the Host Country or receive social security benefits from the Government.

Article XXIV. Access to the Labour Market for Family Members and Issuance of Visas and Residence Permits to Household Employees

SECTION 31

a) The appropriate authorities shall grant working permits for spouses of officials assigned to the Office whose duty station is in the Host Country, and their children forming part of their household who are under 21 years of age or economically dependent. Without prejudice to the foregoing, the regulations of the Host Country shall apply in connection to granting of permits for spouses and children.

b) The competent authorities shall issue visas and residence permits and any other documents, where required, to household employees of officials assigned to the Office as speedily as possible.

Article XXV. Settlement of Disputes

Section 32

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

Article XXVI. Final Provisions

Section 33

a) It is the understanding of the Parties that if the Government enters into any Agreement with an intergovernmental organization containing terms and conditions more favourable than those extended to UNFPA under this present Agreement, such terms and conditions shall be extended to UNFPA, by means of a supplemental Agreement.

b) The seat of the Office shall not be removed from the premises unless UNFPA so decides.

Section 34

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

Section 35

a) This Agreement shall enter into force upon receipt by UNFPA of a notification from the Government indicating that the internal procedures necessary for the Agreement's entry into force have been completed. Pending entry into force of this Agreement, the Agreement concluded between the Arab Republic of Egypt and UNDP on 19 January 1987 relating to UNDP's assistance to the country shall apply, *mutatis mutandis,* to the Office and its personnel.

b) This Agreement may be terminated by either Party by written notice to the other and shall terminate six months after the receipt of such notice. Notwithstanding any such

notice of termination, this Agreement shall remain in force until complete fulfilment or termination of all obligations entered into by virtue of this Agreement.

c) This Agreement shall, however, remain in force for such an additional period as might be necessary for the orderly cessation of the activities of the Office, and the resolution of any dispute between the Parties.

In witness whereof the undersigned, being the duly appointed representatives of the respective Parties, have signed this Agreement in the English and Arabic languages, in duplicate. For the purposes of interpretation and in case of conflict, the English text shall prevail.

Done at New York, this 29th day of July, 2010.

[*Signed*]	[*Signed*]
For the Government of the Arab Republic of Egypt	For the United Nations Population Fund

5. Memoranda of Understanding between the United Nations and the International Criminal Court

(*a*) Memorandum of Understanding between the United Nations and the International Criminal Court concerning Cooperation between the United Nations Office of Internal Oversight Services and the International Criminal Court. New York, 25 February and 18 March 2011*

Whereas the United Nations and the International Criminal Court (the "Court") have concluded a Relationship Agreement between the United Nations and the International Criminal Court (the "Relationship Agreement"), which entered into force on 4 October 2004;**

Whereas the United Nations General Assembly, in its resolution 58/318 of 13 September 2004, decided that all expenses resulting from the provision of services, facilities, cooperation and any other support rendered to the Court that may accrue to the United Nations as a result of the implementation of the Relationship Agreement shall be paid in full to the Organization;

Whereas the United Nations Office of Internal Oversight Services ("OIOS") was established pursuant to the United Nations General Assembly resolution 48/218B of 12 August 1994 as an independent office under the authority of the Secretary-General of the United Nations;

Whereas United Nations General Assembly resolution 48/218B of 12 August 1994 provides, *inter alia*, that OIOS will have the mandate to assist the Secretary-General in fulfilling his internal oversight responsibilities in respect of the resources and staff of the United Nations;

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* Entered into force on 18 March 2011 by signature, and with retroactive effect on 19 July 2010 in accordance with article 12.

** United Nations, *Treaty Series*, vol. 2283, p. 195.

Whereas the Assembly of States Parties to the Rome Statute ("Assembly of States Parties") adopted the resolution ICC-ASP/8/Res.1 of 26 November 2009 whereby it established an independent oversight mechanism ("IOM") with the view to conduct investigations on allegations of misconduct by staff and elected officials of the Court and to ensure an effective and meaningful oversight thereof;

Whereas pursuant to the Assembly of States Parties resolution ICC-ASP/8/Res. 1 of 26 November 2009, the Registrar of the Court is tasked with entering into a memorandum of understanding ("MOU") with the OIOS to provide support services on a cost recovery basis for the operationalization of the IOM;

Whereas in Article 10 of the Relationship Agreement, the United Nations agrees that, upon the request of the Court, it shall, subject to availability, provide on a reimbursable basis for the purposes of the Court such facilities and services as may be required and whereas it is further stipulated in that Article that the terms and conditions on which any such facilities or services may be provided by the United Nations shall, as appropriate, be the subject of supplementary arrangements;

Whereas in Article 8, paragraph 2 (b), of the Relationship Agreement, the United Nations and the Court agree to cooperate in the temporary interchange of personnel, where appropriate, making due provisions for the retention of seniority and pension rights;

Whereas in Article 8, paragraph 2 (c), of the Relationship Agreement, the United Nations and the Court agree to strive for the maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services;

Whereas the United Nations and the Court have concluded a Memorandum of Understanding on Reimbursable Loan of Staff on 21 July 2010;

Whereas the United Nations and the Court wish to conclude arrangements of the kind foreseen in Articles 8 and 10 of the Relationship Agreement;

Now, therefore, the United Nations, acting through the OIOS and the Court, acting through its Registry (the "Parties") have agreed as follows:

Chapter I. General Provisions

Article 1. Purpose

This Memorandum of Understanding (the "MOU") sets out the modalities of cooperation between the United Nations and the Court in connection with the setting up and operationalization of the oversight mechanism of the Court.

Article 2. Cooperation

1. OIOS undertakes to cooperate with the Court in accordance with the specific modalities set out in this MOU.

2. This MOU may be supplemented at any time by means of written agreement between the Parties or their designated representatives setting out additional modalities of cooperation between OIOS and the Court.

3. This MOU is supplementary and ancillary to the Relationship Agreement. It is subject to that Agreement and shall not be understood to derogate from any of its terms.

In the case of any inconsistency between the provisions of this MOU and those of the Relationship Agreement, the provisions of the Relationship Agreement shall prevail.

Article 3. Basic principles

It is understood that OIOS shall afford the assistance and support provided for in this MOU to the extent feasible within its capabilities and without prejudice to its ability to discharge its other mandated tasks.

Article 4. Reimbursement

1. All services, facilities, cooperation, assistance and other support provided to the Court by the United Nations pursuant to this MOU shall be provided on a fully reimbursable basis.

2. The Court shall reimburse the United Nations or OIOS in full for and in respect of all clearly identifiable direct costs that the United Nations or OIOS may incur as a result of or in connection with OlOS's providing services, facilities, cooperation, assistance or support pursuant to this MOU.

3. The Court shall not be required to reimburse the United Nations or OIOS for or in respect of:

(*a*) costs that the United Nations or OIOS would have incurred regardless of whether or not services, facilities, cooperation, assistance or support were provided to the Court pursuant to this MOU;

(*b*) any portion of the common costs of the United Nations or of OIOS;

(*c*) depreciation in the value of United Nations or OIOS owned equipment that might be used by the United Nations or OIOS in the course of providing assistance, facilities, cooperation or support pursuant to this MOU.

Chapter II. Services, Facilities and Support

Article 5. Administrative and logistical services

1. At the request of the Court, OIOS is prepared to provide administrative and logistical services to the Court for the purposes of assisting the Court in setting up and operationalizing its own oversight mechanism, including:

(*a*) intake assessment

(*b*) planning support

(*c*) assistance with records review

(*d*) interview planning and preparation

(*e*) guidance on IT forensic analysis and other forensic tools

(*f*) support for the collection and management of evidence

(*g*) advice on and review of investigation support

(*h*) access to OlOS's Investigation Learning Programme.

2. The Court shall make requests for such services in writing. In making such requests, the Court shall specify the nature of the administrative or logistical services

sought, when they are needed and for how long. OIOS shall inform the Court in writing whether or not it accedes to a request as soon as possible and in any event within 10 working days of its receipt. In the event that it accedes to the request, OIOS shall simultaneously inform the Court in writing of the date on which it is able to commence the provision of the services concerned and of their estimated cost.

Personnel Arrangements

Article 6.

1. With a view to assisting the Court in the setting up and operationalization of the IOM, and pursuant to Articles 8 and 10 of the Relationship Agreement, OIOS agrees to make available to the Court, on a reimbursable basis, a staff member of OIOS at the P5 level for the period of one year.

2. The terms and conditions of the arrangement referred to in paragraph 1 above are set out in the Memorandum of Understanding between the United Nations and the International Criminal Court on Reimbursable Loan of Staff concluded on 21 July 2010 (the "July 2010 MOU"), a copy of which is attached as Annex I hereto.

3. OIOS and the Court may decide at any time, by means of a written agreement, to amend the conditions of the arrangement referred to in paragraph 1 above, including those set out in the July 2010 MOU, of the staff member of OIOS to the Court.

4. OIOS and the Court may decide at any time, by means of a written agreement, to enter into arrangements for additional staff to be made available to the Court on such terms and conditions as the Parties may agree.

Article 7.

1. During his/her tenure at the IOM, the loaned staff member shall provide any such service as may be required for the setting up and operationalization of the IOM.

2. If required, the loaned staff member shall provide full investigative services to IOM. The Court shall enter into a separate agreement with OIOS, pursuant to Article 10 of the Relationship Agreement, should the IOM require additional assistance from OIOS for the purposes of the conduct of such investigations.

Chapter III. Implementation

Article 8. Payments

1. OIOS shall submit invoices to the Court for the provision of services, facilities, cooperation, assistance and support under this MOU on a regular basis.

2. The Court shall make payment against such invoices within 30 (thirty) days of the date printed on them.

3. Payment shall be made in United States Dollars, either in cash or by means of bank transfer made payable to the United Nations bank account specified on the invoice concerned.

Article 9. Communications

1. OIOS and the Court, as the case may be, shall each designate official contact persons responsible:

(*a*) for making, receiving and responding to requests under this MOU;

(*b*) for submitting and receiving invoices and for making and receiving payments under Article 7 of this MOU.

2. All requests, notices and other communications provided for or contemplated in this MOU shall be made in writing, either in English or in French.

3. All requests and communications provided for or contemplated in this MOU shall be treated as confidential, unless the Party making the request or communication specifies otherwise in writing. The United Nations, OIOS and the Court shall restrict the dissemination and availability of such requests and communications and the information that they contain within their respective organizations or offices on a strictly "need to know" basis. They shall also take the necessary steps to ensure that those handling such requests and communications are aware of the obligation strictly to respect their confidentiality.

Article 10. Consultation

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

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

3. Any differences between the Parties arising out of or in connection with the implementation of this MOU shall be settled in consultation between the Registrar and the Under-Secretary-General for Internal Oversight Services or the Director for Investigations. If such differences are not settled by such consultations, they shall be referred to the President of the Court and to the Secretary-General of the United Nations for resolution.

Article 11. Indemnity

Each Party shall be responsible for resolving any claims or disputes brought against it by its officials, agents, servants or employees or a third party based on, arising out of, related to, or in connection with the implementation of this MOU by that Party, unless the claim or dispute results from the gross negligence or willful misconduct of the other Party or of the other Party's officials, agents, servants or employees.

CHAPTER IV. FINAL PROVISION

Article 12.

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

2. Notwithstanding the date of signature, this MOU shall be deemed to have entered into force on 19 July 2010. It will remain in force for a period of one year from that date

and shall thus end on 18 July 2011 unless otherwise renewed by written agreement of both Parties.

3. This MOU may be modified or amended by written agreement between the Parties.

For and on behalf of the United Nations	For and on behalf of the Court on behalf of the Court
Date: 25 February 2011 [*Signed*] Carman L. Lapointe Under-Secretary-General for Internal Oversight Services	Date: 18 March 2011 [*Signed*] Silvana Arbia Registrar

Annex I

Memorandum of Understanding between the United Nations and the International Criminal Court on Reimbursable Loan of Staff

The present Memorandum of Understanding between the United Nations and the International Criminal Court, hereinafter referred to as the "Memorandum" sets out the terms and conditions governing fee Reimbursable Loan of [. . .], hereinafter also referred to as the "Staff Member", from the United Nations Office of Internal Oversight Services, hereinafter referred to as "OIOS", to the International Criminal Court, hereinafter referred to as "ICC", within the framework of the Memorandum of Understanding between the United Nations and the International Criminal Court concerning Cooperation between the United Nations Office of Internal Oversight Services and the International Criminal Court.

All three parties concerned, [. . .], United Nations and ICC are signatories of the present Memorandum and confirm that they will fulfil the terms and conditions of the provisions contained therein, as stipulated hereafter.

Status of the Staff Member subject to Reimbursable Loan

Current title:	Investigator
Current category/grade and step:	P-4, step IV
Current duty station:	New York, U.S.A.
Title while on Reimbursable Loan:	Temporary Head of the Independent Oversight Mechanism
Category and grade while on Reimbursable Loan:	P-5 step I
Duty station while on Reimbursable Loan:	The Hague, The Netherlands

The Staff Member has, at the date of the execution of this Memorandum, no dependents.

General Terms and Conditions

1. Pursuant to Article 6 of the Memorandum of Understanding between the United Nations and the International Criminal Court concerning Cooperation between the Unit-

ed Nations Office of Internal Oversight Services and the International Criminal Court, [. . .], a staff member of OIOS at the P-4 level holding a fixed-term appointment shall:

(*a*) be made available to the ICC on a reimbursable loan arrangement (the "Arrangement") and, therefore, all costs incurred by the UN as a result of the present arrangement shall be reimbursed by the ICC, unless specifically excluded herein;

(*b*) continue to be a UN staff member subject to the UN Staff Regulations and Rules;

(*c*) retain his/her contractual rights with the UN;

(*d*) continue to be paid on the UN's payroll;

(*e*) receive all benefits and allowances to which s/he is entitled under the UN Staff Regulations and Rules; and

(*f*) be under the administrative supervision of; but not under contractual relationship with, the ICC.

2. This Arrangement shall be for a period of one year commencing on 19th of July 2010 and expiring on 18th July 2011 without prior notice. The Arrangement shall not be deemed to carry any expectation of or right to an extension unless agreed to by the OIOS, the ICC and the Staff Member.

Extension or Early Termination

3. The UN or ICC may, for financial, administrative, or other reasons, terminate this Arrangement prior to its expiration date. In case the ICC or OIOS wishes to effect such early termination, the ICC or OIOS, as the case may be, will provide the OIOS or the ICC, as the case may be, with a three-month written notice to this effect.

4. The Staff Member may terminate the loan arrangement prior to the scheduled end date by providing a three-month written notice to OIOS and the ICC. Notice may be shorter if the Staff Member, the ICC and OIOS have agreed thereto.

5. OIOS agrees to grant the Staff Member return rights to his/her post in OIOS upon completion of the loan or upon termination prior to the expiration of the Arrangement, provided that such early termination has been effected in accordance with paragraph 4 above,

6. In case of alleged misconduct or unsatisfactory, conduct on the part of the Staff Member, the ICC may terminate the Arrangement with immediate effect upon written notice to OIOS.

Benefit and entitlements

7. Service in the ICC shall be counted for all purposes, including credit towards within-grade increments, as service in the UN.

Salary and Allowances

8. The UN shall continue to pay the Staff Member's salary and allowances, including any post adjustment in force at the new duty station.

Pension Fund

9. The Staff Member shall continue to participate in the UN Joint Staff Pension Fund (UNJSPF). The UN shall continue to pay into the Pension Fund in accordance with the UN Staff Regulations and Rules. This Arrangement shall not affect any rights the Staff Member may have acquired under the UNJSPF.

Service-incurred coverage

10. (a) Any claim for compensation for service-incurred illness, injury or death shall be made to, and dealt with by, the organization to which service it is attributable, under its applicable regulation and rules.

(b) Any compensation based on salary shall be calculated with reference to the last grade and step held by the Staff Member at the time of death or incapacity giving rise to the compensation.

Health and Group Life Insurance

11. The Staff Member will be entitled to continue participation in the health or group life insurance arrangement of the UN, as appropriate.

Annual Leave

12. (a) The Staff Member will carry with, him/her to the ICC his/her accrued annual leave credit.

(*b*) If so requested by the Staff Member, ICC will enable the Staff Member to take, before his/her return to OIOS, all annual leave that s/he accumulated during his/her service with the ICC.

(*c*) When the Staff Member returns to OIOS, s/he will carry forward his/her accrued leave credit from the ICC to OIOS.

Relocation and Travel

13. The Staff Member's entitlement to travel costs in connection with the loan arrangement will be governed by the regulations and rules of the UN. The cost of travel between New York and The Hague, and any other related travel costs, shall be borne by the ICC.

14. The Staff Member's entitlement to assignment grant in connection with the loan arrangement shall be governed by the regulation ICC in The Hague, as applicable, shall be borne by ICC. The cost of any assignment grant upon the Staff Member's return to OIOS New York, as applicable, will be borne by ICC.

15. All costs related to official travel undertaken by the Staff Member during the period of loan to ICC shall be governed by the ICC regulations and rules and shall be borne by the ICC.

16. In cases of early termination of the loan arrangement, the relocation entitlements of the Staff Member shall be governed by the regulations and rules of, and borne by, the ICC.

Other

17. Performance assessments and evaluations of the Staff Member's work during the period of the loan shall be prepared by the ICC and provided to OIOS.

18. The Regulations and Rules of the UN shall apply in the event of alleged misconduct or unsatisfactory conduct.

19. Appeals against administrative decisions taken, during the period of loan will be submitted to the appropriate UN appeals body and be dealt with under the UN regulations and rules.

20. No part of this Memorandum shall be taken or interpreted against the UN regulations and rules.

21. All liabilities, including, but not limited to, financial liabilities, shall be borne by the ICC except where expressly stated otherwise in this memorandum.

Confidentiality

22. The United Nations shall ensure that the Staff Member will exercise the utmost discretion in regard to all matters of official business of the ICC; shall not communicate to any person, government or any entity any information known by reason of the implementation of this loan which has not been made public, except in the course of the Staff Member's duties or by authorization of the appropriate authorities of the ICC; and shall not at any time use such information to private advantage and shall not at any time publish anything based thereon except with the written approval of the appropriate authorities of the ICC. These obligations do not cease upon termination of this loan.

Name of Staff member:	[. . .]
Signature and Date:	[*Signed*] 16 July 2010
For the United Nations:	Dominique Gagnon, Chief, Section D, HR Services, LDSD/Office of Human Resources Management
Signature and Date:	[*Signed*] 16/07/10
For International Criminal Court:	Kristiane Golze, Chief Human Resources Section
Signature and Date:	[*Signed*] (OIC) 21/07/10

(*b*) Memorandum of Understanding Between the United Nations and the International Criminal Court Concerning the Provision by the United Nations Office at Nairobi of Support Services and Facilities to the Registry of the Court in Connection with its Activities in the Republic of Kenya. Nairobi, 9 June 2011 and The Hague, 13 June 2011*

Whereas the United Nations and the International Criminal Court (the "Court") have concluded a Relationship Agreement between the United Nations and the International Criminal Court (The "Relationship Agreement"), which entered into force on 4 October 2004;

Whereas the United Nations General Assembly, in its resolution 58/318 of 13 September 2004, decided that all expenses resulting from the provision of services, facilities, cooperation and any other support rendered to the Court that may accrue to the United Nations as a result of the implementation of the Relationship Agreement shall be paid in full by the Court to the Organization;

Whereas the United Nations, represented by the United Nations Security Coordinator, and the International Criminal Court have concluded a Memorandum of Understanding Regarding Coordination of Security Arrangements (the "MOU on Security Arrangements") that entered into force on 22 February 2005;

Whereas the Secretary-General of the United Nations and the Court have concluded a special arrangement for the purposes of Article 12 of the Relationship Agreement by means of an exchange of letters between the Secretary-General and the Registrar of the Court dated 31 January 2005 and 22 February 2005 (the "special arrangement on UNLPs"), which entered into force on 3 March 2005;

Whereas in its decision ICC-01/09–19 issued on 31 March 2010, Pre-Trial Chamber II of the Court authorized investigations by the Prosecutor of the Court into the situation in the Republic of Kenya in relation to alleged crimes against humanity within the jurisdiction of the Court committed between 1 June 2005 and 20 November 2009;

Whereas the Registrar of the Court is mandated to provide all administrative and logistical support as well as to carry out certain Registry-mandated activities in the Republic of Kenya, including public information and protection of victims and witnesses;

Whereas in Article 10 of the Relationship Agreement, the United Nations agreed that, upon the request of the Court, it shall, subject to availability, provide on a reimbursable basis for the purposes of the Court such facilities and services as may be required;

Whereas it is further stipulated in Article 10 of the Relationship Agreement that the terms and conditions on which any facilities or services may be provided by the United Nations shall, as appropriate, be the subject of supplementary arrangements;

Whereas in Article 8, paragraph 2 (c), of the Relationship Agreement, the United Nations and the Court agreed to strive for the maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services;

Whereas the Director General of the United Nations Office in Nairobi (UNON), in a letter dated 14 September 2010, has confirmed that UNON will be in a position to provide

* Entered into force on 13 June 2011 by signature, in accordance with article 14.

office space for the Registry of the Court in 2011 within the UNON compound and a wide range of administrative support services;

Whereas the Government of the Republic of Kenya communicated to UNON in its Note Verbale of 4 April 2011 that it had no objection to the Court establishing an office within the UNON compound;

Whereas the United Nations and the Court now wish to conclude arrangements of the kind envisioned in Articles 8 and 10 of the Relationship Agreement;

Now, therefore, the United Nations, acting through the United Nations Office in Nairobi (UNON), and the Court, acting through its Registrar, (the "Parties") agree as follows:

Article 1. Purpose

This Memorandum of Understanding (the "MOU") sets out the modalities of cooperation between the United Nations and the Court in connection with the investigations conducted by the Prosecutor of the Court into the situation in Kenya in relation to crimes against humanity within the jurisdiction of the Court committed between 1 June 2005 and 20 November 2009.

Article 2. Cooperation

1. The United Nations and the Court undertake to cooperate with each other in accordance with the specific modalities set out in this MOU.

2. This MOU may be supplemented at any time by means of a written agreement between the Parties setting out additional modalities of cooperation between the United Nations and the Court.

Article 3. Basic principles

1. This MOU is supplementary and ancillary to the Relationship Agreement. It is subject to that Agreement and shall not be construed as derogating from any of its terms. In case of any inconsistency between the provisions of this MOU and those of the Relationship Agreement, the provisions of the Relationship Agreement shall prevail.

2. It is agreed that UNON shall make available to the Court the facilities, services, assistance and support provided for in this MOU to the extent feasible within its capabilities and without prejudice to its ability to discharge its other mandated functions.

3. The Court acknowledges that the Government of the Republic of Kenya (the "Government") has primary responsibility for the safety and security of all individuals, property and assets present on its territory. Without prejudice to the MOU on Security Arrangements, neither the United Nations nor UNON shall be responsible for the safety or security of the staff/officials or assets of the Court or of potential witnesses, witnesses, victims, suspects or accused or convicted persons identified in the course, or as a result, of the Prosecutor's investigations or of the legal representatives of victims, suspects or accused or convicted persons or of individuals identified by suspected, accused or convicted persons as witnesses or potential witnesses in their defence. In particular, nothing in this MOU shall be understood as establishing or giving rise to any responsibility on the part of the United Nations or UNON to ensure or provide for the protection of witnesses, potential witnesses or victims identified by the Prosecutor or contacted by the Registry.

Article 4. Reimbursement

1. All services, facilities, assistance and support provided to the Court by UNON pursuant to this MOU shall be provided on a fully reimbursable basis. The Court shall reimburse UNON in full for and in respect of all clearly identifiable direct costs that UNON may incur as a result of or in connection with UNON providing services, facilities, assistance or support pursuant to this MOU. UNON and the Court shall endeavour to identify such costs in advance and to agree on relevant estimates. UNON shall, where possible, notify the Court of any additional costs that it might subsequently identify and of any increase in those estimates in advance of making available and rendering the relevant services, facilities, assistance and support.

2. The Court shall not be required to reimburse UNON for or in respect of;

a. costs that UNON would have incurred regardless of whether or not services, facilities, assistance or support were provided to the Court pursuant to this MOU;

b. any portion of the common costs of UNON;

c. depreciation in the value of UNON owned equipment that might be used by UNON in the course of providing services, facilities, assistance or support pursuant to this MOU.

3. UNON shall submit invoices to the Court for the provision of services, facilities, assistance and support under this MOU on a timely basis after receipt of a request for the provision of such services, facilities, assistance or support.

4. The Court may request further details in writing regarding any services, facilities, assistance or support for which an invoice has been submitted by UNON.

5. The Court shall make payment in full on such invoices within 30 (thirty) days of the date printed on them, unless it has requested further details in accordance with the preceding paragraph, in which case it shall make payment within 30 (thirty) days of the receipt of such details.

6. Payment shall be made in United States Dollars, either in cash or by means of bank transfer made payable to the UNON bank account specified on the invoices concerned.

Article 5. Facilities

1. With the prior written consent of the Government, UNON shall make available to the Court office space within the UNON compound (the "office space") capable of accommodating up to a maximum of twenty (20) staff/officials of the Court.

2. UNON shall maintain the office space and its related infrastructure in good and working order and shall take the necessary steps to ensure that the office space is provided with:

a. all necessary utilities, including electricity, water, sewerage, heat and air conditioning, and

b. all necessary services, including garbage collection, cleaning, pest control, fire and security and safety patrols and inspections and use of UNON's internal mail and messenger services

c. access to UNON's information technology services and support, subject to compliance with UNON's information technology protocols, policies and rules, it being noted that UNON shall provide the Court with a non-UN domain name for its e-mail and other information technology services.

3. UNON shall issue appropriate but distinct grounds passes bearing the name and insignia of the Court to staff/officials of the Court using the office space and to persons invited by the Court to visit the office space. The Court shall designate a staff member/official who may issue such invitations. Mutually satisfactory procedures shall be put in place so that the UNON security services are adequately informed of such invitations in a timely manner.

4. It shall be a condition of the use of the office space by any staff member/official of the Court that he/she first sign a waiver of liability as set out in Annex A of this MOU. The Court shall advise its staff/officials concerned of this requirement and shall instruct them to complete and sign that waiver. The Court shall transmit completed and signed waivers to UNON at least 5 (five) working days in advance of the arrival of the staff/officials concerned at the UNON compound.

5. The United Nations shall not be responsible in any way for the safety or security of any staff/officials of the Court who use the office space, nor of individuals who are invited by the Court to visit the office space.

6. The Court shall take the necessary steps to ensure that its staff/officials using, and all persons invited by it to visit, the office space comply with all relevant instructions, issuances, circulars and procedures issued by UNON regarding entry to, behaviour on and the safety and security of the UNON compound while they are present in the UNON compound.

7. Staff/officials of the Court who use the office space shall be granted access, on the same terms and conditions as staff members of the United Nations serving at UNON, to UNON catering facilities, the UNON Recreation Centre, the UNON Gift Centre and, subject to the prior written consent of the Government, the UNON Commissary.

8. Staff/officials of the Court who are deployed to the office space shall, subject to their signature of a waiver of liability as set out in Annex B, be permitted use of the UNON shuttle-to-home service for staff working after hours and, in the case of General Service staff, to the staff bus services operated by UNON.

Article 6. Services, Assistance and Support

1. At the request of the Court, UNON is prepared to provide the following services, assistance and support to the Court:

a. access to UNON's vehicle maintenance facilities for the purpose of first line maintenance of the Court's vehicles, it being understood that neither the United Nations nor UNON is in a position to guarantee parts, consumables or workmanship;

b. with the prior written consent of the Government, the sale of petrol, oil and lubricants (POL), of computing equipment and supplies and of PEP kits;

c. arrangement of rental by the Court from commercial operators of motor vehicles for the purposes of the official travel of its staff/officials. The procurement of

such rental services shall be carried out in accordance with the United Nations Financial Regulations and Rules, provided that the vehicle rental contract will be entered into between the Court and the rental service provider;

d. with the prior written consent of the Government and on the understanding that the Court purchases compatible equipment for that purpose, access to United Nations two-way radio security channels for the purposes of communications with the Republic of Kenya, together with assistance in programming, supporting and maintaining such equipment;

e. without prejudice to the MOU on Security Arrangements, processing of applications to embassies and consulates accredited in Nairobi for the issuance of visas to staff/officials of the Court for the purposes of their official travel;

f. subject to the terms of the special arrangement on UNLPs, the processing of applications for the issuance of United Nations Laissez-Passer to staff/officials of the Court and for their renewal, as and when necessary;

g. arrangement of shipping by the Court of the Court's official shipments. The procurement of such shipping services shall be carried out in accordance with the UN Regulations and Rules, provided that the Court shall enter into the shipping contract and the Court shall obtain all insurances it considers necessary;

h. staff development and training services for staff/officials of the Court;

i. where possible and to the extent feasible and subject to the terms of the MOU on Security Arrangements, host-country relation services for Court officials, staff and their dependents visiting or deployed to the Republic of Kenya on official business, on the understanding that such services shall not include application to or intervention with the Kenyan authorities with a view to securing the implementation or respect by the Government of the privileges and immunities, facilities and exemptions of the Court and its staff/officials as specified in the Agreement on the Privileges and Immunities of the International Criminal Court of 9 September 2002* or in other agreements or arrangements defining the privileges and immunities of the Court;

j. facilities for the holding of meetings and seminars organized by the Court, including translation and interpretation services, documentation and conference services and other logistical support services related to the organization of such meetings and seminars. The terms and conditions on which any such facilities and services are provided shall be the subject of supplementary arrangements between UNON and the Registry.

2. In making requests for such services, assistance or support, the Court shall specify the nature of the services, assistance or support that is being sought, when it is sought and for how long. UNON shall inform the Court whether or not it accedes to a request as soon as possible and in any event within 5 (five) working days of its receipt. In the event that it accedes to a request, UNON shall simultaneously inform the Court in writing of the date on which it is able to commence provision of the services, assistance or support concerned and of their estimated cost.

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* United Nations, *Treaty Series*, vol. 2271, p. 3.

3. In accordance with the MOU on Security Arrangements and to the extent possible, the United Nations shall make provisions to include the office space provided to the Court, its assets and personnel (staff and non-staff) within the UNON security plan, including security protocols, warden system, and all security training and orientation extended to UNON staff, on the same basis, extended to other UN staff and other personnel present within the UNON Gigiri Complex.

4. The Court agrees to comply with procedures established by UNON with respect to requesting and utilizing facilities, services, assistance and support provided by UNON to the Court. It shall take the necessary steps to ensure that its staff/officials are made aware of such procedures and that they comply with same.

5. The Court agrees that all services, assistance and support will be provided in accordance with applicable United Nations regulations, rules, policies and procedures.

Article 7. Limitations on Court's Use of Office Space, Facilities and Services

1. The Court agrees that the office space made available to it by UNON pursuant to this MOU shall *not* be used for:

a. meetings with, the interviewing of or the taking of statements from potential witnesses, witnesses, victims, suspects or accused persons or for meetings with the legal representatives of victims, suspects or accused persons or for meetings with or the counselling of victims, witnesses and others who may be at risk on account of the cooperation of victims or witnesses with the Court;

b. the service of judicial documents in connection with proceedings before the Court, including warrants, summonses, orders, requests and notices;

c. storing information or evidence gathered by the Prosecutor in the course of his investigations or by the Registrar for the purpose of facilitating investigations pursuant to an order of a Pre-Trial Chamber or a Trial Chamber;

d. holding press conferences or other events which the media or the general public are invited to attend.

2. The Court agrees that information technology services and support that may be made available to it by UNON pursuant to this MOU shall not be used for the creation, storage or communication of documentation or records or information of the kinds described in paragraph 1 (c) of this Article.

3. The Court agrees that facilities for the holding of meetings and seminars that may be provided to it by UNON pursuant to this MOU shall not be used for press conferences or other events which the media or the general public are invited to attend.

Article 8. Medical Services

1. UNON shall provide:

a. primary medical services at UNON's Drop-in Clinic

b. medical travel services at UNON's medical Travel Centre

for staff/officials of the Court who are present in the Republic of Kenya on official business.

2. At the request of the Court, UNON shall provide:

a. training in basic life support skills to the Court's field security officers and other critical staff and

b. paramedical training to the Court's paramedics who are deployed to the Republic of Kenya.

3. UNON shall afford the Court access to its public health education classes and counselling services to staff/officials of the Court who are deployed to the Republic of Kenya.

4. UNON shall include the staff/officials of the Court who are deployed to the Court's office space in the UNON compound within the scope of its occupational health services, its mass casualty planning and preparations, its pandemic preparedness planning and its travel advisory system. It shall also provide the Court upon request with information on health-care institutions and service providers in the Republic of Kenya, it being understood that neither the United Nations nor UNON is in a position to guarantee or warrant the accuracy of such information and that the Court acts on such information at its own risk.

5. At the request of the Court, UNON shall provide medical examinations for staff/officials of the Court who are deployed to the Republic of Kenya. It shall also provide the Court with certification of their sick leave, as and when appropriate.

6. At the request of the Court, UNON shall, as necessary, arrange for the Court the emergency medical treatment of staff/officials of the Court who are present on official business in the Republic of Kenya, including, as necessary, their evacuation from points within the Republic of Kenya to appropriate medical facilities in Nairobi or, as necessary, from the Republic of Kenya to appropriate medical facilities abroad, as well as their admission to and treatment at those facilities. UNON shall arrange for daily visits to staff/officials of the Court receiving treatment at medical facilities in the Republic of Kenya and shall follow up with the doctors who are treating them and relay reports on their progress, including medical reports, to the Court, it being understood that: (i) only UNON medical officers shall be in contact with doctors for the said follow up and (ii) UNON undertakes to respect the confidentiality of such medical information.

7. At the request of and in cooperation with the Court, UNON shall arrange for the Court the repatriation of the body of a staff member/official of the Court who dies in the Republic of Kenya while on official business as well as his or her personal effects located there. As between the United Nations and the Court, it shall be the responsibility of the Court to arrange for any autopsy that may need to be conducted in the Republic of Kenya.

8. The Court shall advise its staff/officials travelling to the Republic of Kenya on official business of the requirement to complete and sign a Release from Liability Form, as set out in Annex C of this MOU, as a condition to obtaining medical services pursuant to this MOU and shall accordingly instruct them to complete and sign such a form before travelling and to carry a copy with them at all times while in the Republic of Kenya. The Court shall transmit completed and signed forms to UNON in advance of the arrival of the staff/officials concerned in the Republic of Kenya.

Article 9. Communications

1. The following officials shall serve as Focal Points for communications between the Parties pursuant to this MOU:

For the UNON	For the Court
The Chief of Staff Office of the Director-General United Nation Office at Nairobi P.O. Box 67578 Nairobi 02000 Kenya	The Chief of the Field Operations Section Registry International Criminal Court Maanweg 174, 2516 AB The Hague, Netherlands

2. The Focal Points shall be responsible for:

(*a*) making, receiving and responding to requests under Article 6 and Article 8, paragraphs 2, 5 and 7, of this MOU;

(*b*) submitting and receiving invoices, requesting and providing further details and making and receiving payments under Article 4 of this MOU;

(*c*) transmitting and receiving the waivers and medical release forms provided for in Article 5, paragraphs 3, 4 and 8, and Article 8, paragraph 8, of this MOU;

(*d*) transmitting the reports provided for in Article 8, paragraph 6, of this MOU.

3. Mutually satisfactory procedures shall be put in place for the making and receiving of requests under Article 8, paragraph 6, of this MOU.

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

5. All requests and communications provided for or contemplated in this MOU shall be treated as confidential unless the Party making the request or communication specifies otherwise in writing. UNON shall restrict the dissemination and availability of such requests and communications and the information that they contain within its relevant offices on a strictly "need to know" basis. UNON shall also take the necessary steps to ensure that those handling such requests and communications are aware of the obligation to maintain strict confidentiality in respect of communications related to the implementation of activities and services pursuant this MOU.

Article 10. Consultation

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

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

3. Any differences between the Parties arising out of or in connection with the implementation of this MOU shall be settled in consultation between the Registrar of the

Court and the Director General of UNON. If such differences are not settled by such consultations, they shall be referred to the President of the Court and to the Secretary-General of the United Nations for resolution.

Article 11. Indemnity

1. Each Party shall, at its sole cost and expense, be responsible for resolving, and shall indemnify, hold and save harmless, and defend the other Party, its officials, agents servants and employees from and against, all suits, proceedings, claims, demands, losses and liability of any nature or kind, including, but not limited to, all litigation costs, attorneys' fees, settlement payments, damages and all other related costs and expenses (the "Liability"), brought by its officials, agents, servants or employees, based on, arising out of, related to, or in connection with the implementation of this MOU, unless the Liability results from the gross negligence or wilful misconduct of the other Party or of the Party's officials, agents, servants or employees.

2. The Court shall, at its sole cost and expense, be responsible for resolving, and shall indemnify, hold and save harmless, and defend the United Nations, including UNON, and their officials, agents, servants and employees from and against, all suits, proceedings, claims, demands, losses and liability of any nature or kind, including, but not limited to, all litigation costs, attorneys' fees, settlement payments, damages and all other related costs and expenses (the "Liability"), brought by third parties, including, but not limited to, invitees of the Court, witnesses, victims, suspects and accused, convicted and sentenced persons or any other third parties, based on, arising out of or related to, or in connection with the implementation of this MOU, except to the extent the Liability results from the gross negligence or wilful misconduct of the United Nations, including UNON, or their officials, agents, servants or employees.

Article 12. Consent of the Government

Until such time as the United Nations and the Government of the Republic of Kenya may conclude an agreement by which the Government gives its written consent to UNON providing the Court with the services, facilities, assistance and support that are provided for in Article 5, paragraphs 1 and 7 (last element), and in Article 6, paragraph 1 (b) and (d), of this MOU, it shall be the responsibility of the Court to obtain the prior written consent of the Government, as provided for in those Articles.

Article 13. Termination

1. Either Party may terminate this MOU upon providing the other Party with thirty (30) days notice, in writing, by registered mail or courier service with acknowledgement of receipt.

2. In the event of a termination initiated by the Court, the Court shall remain responsible for the payment of outstanding invoices submitted to it by UNON for services, facilities, assistance and support provided to it by UNON before the receipt of the notice of termination.

Article 14. Final Provisions

1. This MOU shall enter into force on the date on which it is signed by both of the Parties.

2. This MOU shall remain in force until it is terminated either by written agreement of the Parties or in accordance with the provisions of its Article 13 of this MOU.

3. This MOU may be modified or amended by written agreement between the Parties.

4. The Annexes to this MOU are an integral part of this MOU.

In witness whereof, the Parties have caused this Memorandum of Understanding to be executed by their duly authorized representatives with the understanding that it shall take effect as of the last date indicated below.

For and on behalf of the United Nations Office at Nairobi	For and on behalf of the International Criminal Court
Date: 09/06/2011 Nairobi [*Signed*] Sahle-Work Zewde Director-General	Date: 13/06/2011 The Hague [*Signed*] Silvana Arbia Registrar

ANNEX A
RELEASE FROM LIABILITY IN CONNECTION WITH USE OF OR PRESENCE ON UN/UNON PREMISES

I, the undersigned, hereby recognize that my use of or presence on UN/UNON premises is solely for my own convenience and benefit or that of my employer and may take place in areas or under conditions of special risk. In consideration of my being permitted on to or to use such premises, I hereby:

(*a*) assume all risks and liabilities during my use of or presence on UN/UNON premises;

(*b*) recognize that neither the United Nations, including UNON, nor any of their officials, agents, servants or employees is liable for any loss, damage, injury or death that may be sustained by me during my use of or presence on UN/UNON premises;

(*c*) agree, for myself as well as for my dependants, heirs and estate, to hold harmless the United Nations, including UNON, and all their officials, agents, servants and employees from any claim or action on account of any such loss, damage, injury or death;

(*d*) agree, for myself as well as for my dependants, heirs and estate, that, in the event that the United Nations has applicable insurance to cover personal injury or death, the liability of the United Nations shall be limited to and shall not exceed the amounts of such insurance coverage;

(*e*) further agree, for myself as well as for my dependants, heirs and estate, that we shall look first to any insurance taken out by myself or provided by my employer covering such loss damage, injury or death and that compensation shall be payable by the United Nations only to the extent that the limits provided under paragraph (d) above exceed the amounts recovered from such insurance;

(*f*) agree, for myself as well as for my dependants, heirs and estate, that in the event that I sustain any loss, damage, injury or death during my use of or presence on UN/UNON premises for which the United Nations otherwise may be found to be liable, such liability, if any, shall be subject to the terms of paragraphs 8 and 9 of General Assembly resolution 52/247 of 17 July 1998, whether or not my use of or presence on such premises is carried out in the context of peacekeeping operations and whether or not such terms are otherwise directly applicable by virtue of that resolution.*

* In paragraphs 8 and 9 of its resolution 52/247 of 17 July 1998, the General Assembly:

"8. Decides that, where the liability of the Organization is engaged in relation to third-party claims against the Organization resulting from peacekeeping operations, the Organization will not pay compensation in regard to such claims submitted after six months from the time the damage, injury or loss was sustained, or from the time it was discovered by the claimant, and in any event after one year from the termination of the mandate of the peacekeeping operation, provided that in exceptional circumstances, such as described in paragraph 20 of the report of the Secretary-General (A/51/903), the Secretary-General may accept for consideration a claim made at a later date;

9. Decides also, in respect of third-party claims against the Organization for personal injury, illness or death resulting from peacekeeping operations, that:

(a) Compensable types of injury or loss shall be limited to economic loss, such as medical and rehabilitation expenses, loss of earnings, loss of financial support, transportation expenses associated with the injury, illness or medical care, legal and burial expenses;

(b) No compensation shall be payable by the United Nations for non-economic loss, such as pain and suffering or moral anguish, as well as punitive or moral damages;

(c) No compensation shall be payable by the United Nations for homemaker services and other such damages that, in the sole opinion of the Secretary-General, are impossible to verify or are not directly related to the injury or loss itself;

(d) The amount of compensation payable for injury, illness or death of any individual, including for the types of loss and expenses described in subparagraph (a) above, shall not exceed a maximum of 50,000 United States dollars, provided, however, that within such limitation the actual amount is to be determined by reference to local compensation standards;

(e) In exceptional circumstances, the Secretary-General may recommend to the General Assembly, for its approval, that the limitation of 50,000 dollars provided for in subparagraph (d) above be exceeded in a particular case if the Secretary-General, after carrying out the required investigation, finds that there are compelling reasons for exceeding the limitation".

ANNEX B

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF USE OF UN/UNON-PROVIDED GROUND TRANSPORT

I, the undersigned, hereby recognize that all my travel on United Nations-provided transport is solely for the convenience and benefit of the International Criminal Court and/or of myself, and may take place in areas or under conditions of special risk. In consideration of being permitted to travel on such means of transport, I hereby:

(*a*) assume all risks and liabilities during such travel;

(*b*) recognize that neither the United Nations, including UNON, nor any of their officials, employees or agents is liable for any loss, damage, injury or death that may be sustained by me during such travel;

(*c*) agree, for myself as well as for my dependants, heirs and estate, to hold harmless the United Nations, including UNON, and all their officials, employees and agents from any claim or action on account of any such loss, damage, injury or death;

(*d*) agree, for myself as well as for my dependants, heirs and estate, that, in the event that I sustain any loss, damage, injury or death during such travel for which the United Nations otherwise may be found to be liable, such liability, if any, shall be subject to the terms of paragraphs 8 and 9 of General Assembly resolution 52/247 of 17 July 1998, whether or not my travel on United Nations-provided means of transport was in the context of a peacekeeping operation and whether or not such terms are otherwise directly applicable by virtue of that resolution.[*]

_____

Passenger

_____

Date

[*] *Ibid.*

ANNEX C

RELEASE FROM LIABILITY IN CONNECTION WITH PROVISION OF MEDICAL SERVICES BY UNON

I, the undersigned, hereby recognize that any and all medical services that may be provided to me by the United Nations or at United Nations medical facilities in the Republic of Kenya or arranged for me by the United Nations in the Republic of Kenya or elsewhere are solely for my own convenience and benefit and for work-related purposes and that they may be provided in areas or under conditions of special risk. In consideration of receiving such medical services, I hereby:

(*a*) assume all risk and liabilities in connection with the provision of such medical services;

(*b*) recognize that neither the United Nations, including UNON, nor any of their officials, employees or agents is liable for any loss, damage, injury or death that may be sustained by me during the provision of such medical services;

(*c*) agree, for myself as well as for my dependants, heirs and estate, to hold harmless the United Nations, including UNON, and all of their officials, employees and agents from any claim, suit, liability or demand related to such loss, damage, injury or death;

(*d*) agree, for myself as well as for my dependants, heirs and estate, that, in the event that the United Nations has insurance to cover personal injury or death for any loss arising from emergency medical services provided, the liability of the United Nations shall be limited to, and shall not exceed, the amounts of such insurance coverage;

(*e*) further agree, for myself as well as for my dependants, heirs and estate, that we shall look first to any insurance taken out by myself or provided by my employer covering such loss, damage, injury or death and that compensation shall be payable by the United Nations only to the extent that the limits provided under paragraph (d) above exceed the amounts recovered from such insurance.

_____ _____

(Date) (Signature of staff member/official)

_____ _____

(Witness) (Print name of staff member/official)

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 2011, the Republic of Mozambique and the Republic of Moldova acceded to the Convention.

In 2011, 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*
Republic of Moldova	2 September 2011	United Nations Industrial Development Organization***
Republic of Mozambique	6 October 2011	United Nations Industrial Development Organization
Republic of Mozambique	6 October 2011	World Health Organization****

2. International Labour Organization

On 26 February 2011, an agreement for extension to the "Supplementary Understanding and its Minutes of the Meeting dated 28th February, 2007" [1] was concluded and entered into force with the Government of Myanmar. The agreement extended the Supplementary Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her.[2]

On 9 July 2011, the Government of South Sudan confirmed its acceptance of a provisional framework agreement to cover technical and other cooperation between South Sudan and the International Labour Organization, pending conclusion of the final agreement.

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* 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.

*** United Nations, *Treaty Series*, vol. 1482, p. 244.

**** Annex VII - World Health Organization - to the Convention on the Privileges and Immunities of the Specialized Agencies was signed at Geneva, 17 July 1948, and has entered into force.

[1] International Labour Office, Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No, 29), document GB.298/5/1, appendix. Available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_gb_298_5_1_en.pdf (accessed on 31 December 2011).

[2] *Ibid*., Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No, 29), document GB.310/5, appendix 1. Available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_152980.pdf (accessed on 31 December 2011).

3. Food and Agriculture Organization

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

On 25 April and 14 September 2011, agreements were concluded with the Republic of Tajikistan and the Democratic Republic of Timor-Leste, respectively, for the establishment of FAO representations in those countries. Both governments agreed to extend to the FAO Representative and to the Organization's staff and assets the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies and confirmed that the FAO Representatives will receive the treatment accorded in international law to Heads of Diplomatic Missions.

(*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 2011 with the Governments of the following countries acting as host to such sessions: Brazil, Bulgaria, Canada, Egypt, Finland, France, Germany, India, Morocco, Papua New Guinea, Spain, Sri Lanka, Switzerland, Thailand and Tunisia.

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:

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 [name of State] authorities shall be entitled to adopt appro-

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

priate measures to ensure the protection of the participants, particularly against fire and other risks, of the above-mentioned premises, facilities and furniture. The Government of [name of State] may also claim from UNESCO compensation for any damage to persons and property caused by the fault of staff members or agents of the Organization.

5. International Fund for Agricultural Development

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

Whereas the International Fund for Agricultural Development (IFAD), a Specialised Agency of the United Nations Organisation, wishes to establish a Country Office in the Republic of Malawi 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 Malawi agrees to permit the establishment of such an office.

Whereas the Republic of Malawi acceded on 2 August 1965 to the Convention on the Privileges and Immunities of the Specialized Agencies.

Whereas the Republic of Malawi ratified on 13 December 1977 the Agreement Establishing IFAD.

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

Article I. Definitions

For the purpose of this Agreement:

"Government" means the Republic of Malawi;

"the Fund" or "IFAD" means the International Fund for Agricultural Development;

* Entered into force on 18 October 2011 by signature, in accordance with article XIV. In 2011, IFAD concluded eight textually similar agreements, namely the Headquarters Agreement between the Government of the Republic of Uganda and the International Fund for Agricultural Development on the Establishment of the IFAD's Country Office (entered into force on 20 February 2011); Agreement between the Government of the Republic of Mozambique and the International Fund for Agricultural Development on the Establishment of the IFAD's Country Office (entered into force on 20 February 2011); Agreement between the Government of the Republic of Egypt and the International Fund for Agricultural Development on the Establishment of the IFAD's Country Office in Cairo, Egypt (entered into force on 19 November 2011); Agreement between the Government of the Republic of Congo and the International Fund for Agricultural Development on the Establishment of the IFAD's Country Office (entered into force on 21 February 2011); Agreement between the Government of the Republic of Cameroon and the International Fund for Agricultural Development on the Establishment of the IFAD's Country Office (entered into force on 14 June 2011); Agreement between the Government of the Republic of Senegal and the International Fund for Agricultural Development on the Establishment of the IFAD's Country Office (entered into force on 12 October 2011); Agreement between the Government of the Republic of Guinea and the International Fund for Agricultural Development on the Establishment of the IFAD's Country Office (entered into force on 24 May 2011); and Agreement between the Government of the Democratic Republic of Congo and the International Fund for Agricultural Development on the Establishment of the IFAD's Country Office (Entry into force on 22 February 2011).

"Office" means the International Fund for Agricultural Development's Country Office located in the Republic of Malawi;

"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 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 authorised 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.

4. The Office should 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 Malawi.

5. The authorities, officials and agents of the Republic of Malawi shall not enter the Office in an official capacity unless at the request or with the authorisation 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 Malawi 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 Malawi 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 of 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 impaired by such a situation.

Article V. Communications

The Office's communications shall enjoy protection under the conditions and limitations defined in sections 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 and indirect taxes on goods directly imported or purchased locally by the organisation for its official use in the Republic of Malawi, 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. Articles imported under such exemption will not be sold in the Republic of Malawi except under conditions agreed with the Government; and subject to compliance with such conditions as the Commissioner General of the Malawi Revenue Authority (MRA) may prescribe for the protection of revenue.

(*c*) 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 the, and have accounts in the Republic of Malawi in local currency or any other currency and convert any currency held by it into any other currency.

(*b*) transfer currencies within the territory of the Republic of Malawi.

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

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 Malawi, 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 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 in the business of IFAD.

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

5. The Government undertakes to authorise the following persons and their dependants to enter into the Republic of Malawi 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.

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 Malawi to leave the territory of the Republic of Malawi 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 missions.

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 recognised 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 Organisation 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 Malawi:

(*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;

(*b*) exemption from income taxation on salaries and emoluments for IFAD officials as provided under the Taxation Act of the Law of Malawi paragraph(s) under General Exemptions;

(*c*) exemption, together with their spouses and other dependents, for 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 six (6) months after first taking up their functions in the Republic of Malawi;

(*f*) every two (2) years, admission of one vehicle per family, imported or purchased, 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, 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 diplomatic agents.

3. Nationals and permanent residents of the Republic of Malawi employed by the Office shall enjoy privileges and immunities provided in the Taxation Act of the Law of Malawi paragraph(s) under General Exemptions.

Article XII. General provisions

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

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 whom 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 Malawi. They also have the duty not to interfere in the internal affairs of the Republic of Malawi.

4. The President of IFAD has the right to waive this 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 Country Representative shall take all measures necessary 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 the 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 took 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 Malawi.

8. Should the Government find it necessary to apply paragraph 7 of this Article, it shall enter into contact with 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 Malawi.

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 wilful misconduct of such persons.

11. Whenever this Agreement imposes obligations on the competent authorities, the Government shall be ultimately responsible for ensuring the fulfillment of such 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 named by the President of the International Court of Justice, unless he or she is a national of the Republic of Malawi, 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 shall come into force upon signature by both parties.

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

3. The obligations assumed by the Government and the Office 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.

In witness whereof the undersigned duly authorised representatives of the Government and the Fund respectively have, on behalf of both parties, signed the present Agreement in Rome, Italy on 18 October 2011 in two original copies.

Republic of Malawi	Intenational Fund for Agricultural Development
[*Signed*] Brave Rona Ndisale Ambassador of the Republic Malawi	[*Signed*] Kanayo F. Nwanze President

6. United Nations Industrial Development Organization

The United Nations Industrial Development Organization concluded various agreements which came into force in 2011 that contained provisions relating to the legal status, privileges and immunities of UNIDO.

(*a*) Framework agreement between the Swiss Confederation, acting through the State Secretariat for Economic Affairs of Switzerland (SECO) and the United Nations Conference on Trade and Development (UNCTAD), the International Trade Centre (ITC), the United Nations Industrial Development Organization (UNIDO), the International Labour Organization (ILO) and the United Nations Office for Project Services (UNOPS) on the implementation of interagency trade-related assistance in selected Least Developed Countries (LDCs), signed on 9 May 2011*

10. Nothing in or relating to this Framework Agreement shall be construed as a waiver, express or implied, of any of the privileges or immunities accorded to the Parties.

(*b*) Grant agreement between the United Nations Industrial Development Organization and the International Fund for Agricultural Development, dated 3 February, regarding the implementation of a project entitled "Youth as catalysts for small scale agri-business development and growth in Western and Central Africa", signed on 7 February and 31 May 2011**

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*) Exchange of letters between the United Nations Industrial Development Organization and the Republic of South Sudan regarding the continuation of the UNIDO operations in the Republic of South Sudan, signed on 9 July 2011***

The Government of South Sudan confirms that pending conclusion of the Standard Basic Cooperation Agreement between UNIDO and the Government of South Sudan, the provisions of the UNIDO Model Standard Basic Cooperation Agreement, attached hereto

* Entered into force on 9 May 2011 upon signature by all parties.

** Entered into force on 31 May 2011 upon signature.

*** Entered into force on 9 July 2011 upon signature.

shall apply to UNIDO, its premises, property, funds and assets as well as to its personnel and their activities in the Republic of South Sudan.

(*d*) Inter-agency agreement between the United Nations Industrial Development Organization and the Food and Agriculture Organization of the United Nations regarding the implementation of a project in the Republic of South Sudan entitled "Sustainable food security through community-based livelihood development and water harvesting", signed on 5 and 22 July 2011*

16. Nothing in this Inter-agency Letter of Agreement will be deemed a waiver, express or implied, of any of the privileges and immunities of the Lead Executing Agency and the Collaborating Agency.

. . .

20. In carrying out their respective activities, neither the Lead Executing Agency nor the Collaborating Agency shall be considered as a principal or an agent of the other, and the personnel of one shall not be considered as staff members, personnel or agents of the other.

Without restricting the generality of the foregoing sentence, the Lead Executing Agency shall not be liable for the acts or omissions of the Collaborating Agency, its personnel or any persons performing services on its behalf, or vice versa."

(*e*) Memorandum of Understanding between the Government of the Republic of Indonesia and the United Nations System** on the framework for cooperation with and support for the Indonesian national reducing emissions from deforestation and forest degradation (REDD) + programme in the Republic of Indonesia, signed on 20 September 2011***

Article 1. Legal Framework

The Government agrees to the activities to be undertaken by the UN System through UNORCID further to this MOU, and reaffirms that the privileges and immunities and other provisions contained in the Conventions and other agreements or arrangements referred to in the penultimate recital of the Preamble above, will apply to the respective entities of the UN System and their personnel, assets and activities hereunder.

. . .

Article 6. Miscellaneous

i. The implementation of this MOU will be in compliance with the respective regulations, rules, policies and procedures of the Government and the UN System.

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* Entered into force on 22 July 2011 upon signature.

** Refers to United Nations agencies, funds and programmes.

*** Entered into force on 20 September 2011 upon signature.

. . .

iv. The Parties will attempt to resolve by mutual agreement any dispute related to the subject matter of this MOU.

. . .

vi. Nothing in or relating to this MOU will be deemed a waiver, express or implied, of any privileges and immunities of the United Nations, including its subsidiary organs, or of the Specialized Agencies of the United Nations."

(*f*) Memorandum of Understanding between the United Nations Industrial Development Organization and the Foreign Economic Cooperation Office, Ministry of Environmental Protection of the People's Republic of China (FECO), signed on 2 September and 8 October 2011*

Article VI. Privileges and Immunities

Nothing in or relating to this Memorandum of Understanding shall be deemed a waiver, express, or implied, of any of the privileges and immunities of UNIDO, including its subsidiary organs.

* Entered into force on 8 October 2011 upon signature.

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 2011, the number of Member States of the United Nations was 193. The Republic of South Sudan was admitted as a new Member State by General Assembly resolution 65/308 of 14 July 2011.[1]

2. Peace and Security

(*a*) Peacekeeping missions and operations

(i) *Peacekeeping missions and operations established in 2011*

a. Sudan

The United Nations Interim Security Force for Abyei (UNISFA) was established for a period of six months by the Security Council in resolution 1990 (2011) of 27 June 2011.[2] The Council, *inter alia*, decided that UNISFA should be comprised of a maximum of 4,200 military personnel, 50 police personnel, and appropriate civilian support, and that UNISFA should have the following mandate:

(*a*) Monitor and verify the redeployment of any Sudan Armed Forces, Sudan People's Liberation Army or its successor, from the Abyei Area as defined by the Permanent Court of Arbitration; henceforth, the Abyei Area shall be demilitarized from any forces other than UNISFA and the Abyei Police Service;

(*b*) Participate in relevant Abyei Area bodies as stipulated in the Agreement;

(*c*) Provide, in cooperation with other international partners in the mine action sector, de-mining assistance and technical advice;

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[1] As recommended by the Security Council in resolution 1999 (2001) of 13 July 2001. See A/65/905.

[2] For more information about UNISFA, see the UNISFA website at http://www.un.org/en/peacekeeping/missions/unisfa/ and Reports of the Secretary-General on the situation in Abyei in documents S/2011/451, S/2011/603 and S/2011/741.

(*d*) Facilitate the delivery of humanitarian aid and the free movement of humanitarian personnel in coordination with relevant Abyei Area bodies as defined by the Agreement;

(*e*) Strengthen the capacity of the Abyei Police Service by providing support, including the training of personnel, and coordinate with the Abyei Police Service on matters of law and order; and

(*f*) When necessary and in cooperation with the Abyei Police Service, provide security for oil infrastructure in the Abyei Area.

Furthermore, the Security Council, acting under Chapter VII of the Charter, authorized UNISFA within its capabilities and its area of deployment to take the necessary actions to:

(*a*) protect UNISFA personnel, facilities, installations, and equipment;

(*b*) protect United Nations personnel, facilities, installations, and equipment;

(*c*) ensure the security and freedom of movement of United Nations personnel, humanitarian personnel and members of the Joint Military Observers Committee and Joint Military Observer Teams;

(*d*) without prejudice to the responsibilities of the relevant authorities, to protect civilians in the Abyei Area under imminent threat of physical violence;

(*e*) protect the Abyei Area from incursions by unauthorized elements, as defined in the Agreement; and

(*f*) ensure security in the Abyei Area.

In a letter dated 23 June 2011 from the Secretary-General addressed to the President of the Security Council,[3] the Secretary-General transmitted to the Council the Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement on temporary arrangements for the administration and security of the Abyei Area, signed in Addis Ababa on 20 June 2011.[4]

In a letter dated 27 July 2011 from the Secretary-General addressed to the President of the Security Council,[5] the Secretary-General informed the Council of his intention to appoint Mr. Haile Menkerios from South Africa as his Special Envoy for the Sudan and South Sudan, as of 1 August 2011.

In a letter dated 5 August 2011 from the Secretary-General addressed to the President of the Security-Council,[6] the Secretary-General informed the Council of his intention to request UNISFA to undertake a reconnaissance mission along the border between the Sudan and South Sudan as soon as possible. The Agreement on the Border Monitoring Support Mission between the Government of the Sudan and the Government of South Sudan, signed on 30 July 2011, was annexed to the letter.

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[3] S/2011/384.

[4] Annexed to letter dated 23 June 2011 from the Secretary-General addressed to the President of the Security Council (S/2011/384).

[5] S/2011/474.

[6] S/2011/510.

In a letter dated 10 October 2011 from the Secretary-General addressed to the President of the Security Council,[7] the Secretary-General, in accordance with paragraphs 25 to 28 of his report of 29 September 2011 on the situation in Abyei,[8] informed the Security Council that a preliminary assessment of the financial implications showed that the first year of full operations for support to the border mechanism would cost approximately $35.6 million. The Secretary-General indicated that should the Council decide to approve the proposed amendment of the mandate, a request for additional funding would be presented to the General Assembly for its consideration. Such a proposal would be prepared with regard to an appropriate funding period, a projected deployment timeline for personnel and equipment and a detailed assessment of operating conditions. The Security Council adopted resolution 2024 (2011) on 14 December 2011. In that resolution, the Council decided that, in addition to the tasks set out in paragraph 2 of resolution 1990 (2011), UNISFA's mandate would include the following additional tasks in support of the Joint Border Verification and Monitoring Mechanism (JBVMM); those additional tasks would be carried out by UNISFA within its authorized capabilities and within an expanded operational area to include the Safe Demilitarized Border Zone, JBVMM headquarters, sector headquarters and team sites:

(*a*) Assist the parties in ensuring the observance within the Safe Demilitarized Border Zone of the security commitments agreed upon by them in the above-mentioned 29 June and 30 July Agreements;

(*b*) Support the operational activities of the JBVMM, including its sectors and teams, in undertaking verifications, investigations, monitoring, arbitrations, liaison coordinating, reporting, information exchange, patrols, and by providing security as appropriate;

(*c*) Assist and advise the JBVMM in its overall coordination of planning monitoring and verification of the implementation of the Joint Position Paper on Border Security of 30 May 2011;

(*d*) Assist the JBVMM to maintain the necessary chart, geographical and mapping references, which shall be used for the purpose of monitoring the implementation of paragraph 2 of the Agreement on Border Security and the Joint Political and Security Mechanism of 29 June 2011;

(*e*) Facilitate liaison between the parties;

(*f*) Support the parties, when requested, in developing effective bilateral management mechanisms along the border;

(*g*) Assist in building mutual trust.

In resolution 2032 (2011), the Council decided to extend, for a period of 5 months, the mandate of the United Nations Interim Security Force for Abyei (UNISFA) as set out in paragraph 2 of resolution 1990 (2011) and modified by resolution 2024 (2011), and acting under Chapter VII of the Charter of the United Nations, the tasks set out in paragraph 3 of resolution 1990.

[7] S/2011/628.

[8] S/2011/603.

b. Republic of South Sudan

In resolution 1996 (2011) of 8 July 2011, the Security Council, acting under Chapter VII of the Charter, *inter alia*, decided to establish the United Nations Mission in the Republic of South Sudan (UNMISS)[9] for an initial period of one year with the intention to renew for further periods as may be required and that UNMISS should consist of up to 7,000 military personnel and up to 900 civilian police personnel. The Council further decided to review in three and six months whether the conditions on the ground could allow a reduction of military personnel to a level of 6,000.

In the same resolution, the Council welcomed the appointment by the Secretary-General of his Special Representative for the Republic of South Sudan, and decided that the mandate of UNMISS should be to consolidate peace and security, and to help establish the conditions for development in the Republic of South Sudan, with a view to strengthening the capacity of the Government of the Republic of South Sudan to govern effectively and democratically and establish good relations with its neighbours, and accordingly authorized UNMISS to perform the following tasks:

(a) Support for peace consolidation and thereby fostering longer-term statebuilding and economic development, through:

(i) Providing good offices, advice, and support to the Government of the Republic of South Sudan on political transition, governance, and establishment of state authority, including formulation of national policies in this regard;

(ii) Promoting popular participation in political processes, including through advising and supporting the Government of the Republic of South Sudan on an inclusive constitutional process; the holding of elections in accordance with the constitution; promoting the establishment of an independent media; and ensuring the participation of women in decision-making forums;

(*b*) Support the Government of the Republic of South Sudan in exercising its responsibilities for conflict prevention, mitigation, and resolution and protect civilians through:

(i) Exercising good offices, confidence-building, and facilitation at the national, state, and county levels within capabilities to anticipate, prevent, mitigate, and resolve conflict;

(ii) Establishment and implementation of a mission-wide early warning capacity, with an integrated approach to information gathering, monitoring, verification, early warning and dissemination, and follow-up mechanisms;

(iii) Monitoring, investigating, verifying, and reporting regularly on human rights and potential threats against the civilian population as well as actual and potential violations of international humanitarian and human rights law, working as appropriate with the Office of the High Commissioner for Human Rights, bringing these to the attention of the authorities as necessary, and immediately reporting gross violations of human rights to the UN Security Council;

(iv) Advising and assisting the Government of the Republic of South Sudan, including military and police at national and local levels as appropriate, in fulfilling its

[9] For more information about UNMISS, see the UNMISS website at http://www.un.org/en/peacekeeping/missions/unmiss/ and Special Report of the Secretary-General on the Sudan (S/2011/314).

responsibility to protect civilians, in compliance with international humanitarian, human rights, and refugee law;

(v) Deterring violence including through proactive deployment and patrols in areas at high risk of conflict, within its capabilities and in its areas of deployment, protecting civilians under imminent threat of physical violence, in particular when the Government of the Republic of South Sudan is not providing such security;

(vi) Providing security for United Nations and humanitarian personnel, installations and equipment necessary for implementation of mandated tasks, bearing in mind the importance of mission mobility, and contributing to the creation of security conditions conducive to safe, timely, and unimpeded humanitarian assistance;

(c) Support the Government of the Republic of South Sudan, in accordance with the principles of national ownership, and in cooperation with the UN Country Team and other international partners, in developing its capacity to provide security, to establish rule of law, and to strengthen the security and justice sectors through:

(i) Supporting the development of strategies for security sector reform, rule of law, and justice sector development, including human rights capacities and institutions;

(ii) Supporting the Government of the Republic of South Sudan in developing and implementing a national disarmament, demobilization and reintegration strategy, in cooperation with international partners with particular attention to the special needs of women and child combatants;

(iii) Strengthening the capacity of the Republic of South Sudan Police Services through advice on policy, planning, and legislative development, as well as training and mentoring in key areas;

(iv) Supporting the Government of the Republic of South Sudan in developing a military justice system that is complementary to the civil justice system;

(v) Facilitating a protective environment for children affected by armed conflict, through implementation of a monitoring and reporting mechanism;

(vi) Supporting the Government of the Republic of South Sudan in conducting demining activities within available resources and strengthening the capacity of the Republic of South Sudan Demining Authority to conduct mine action in accordance with International Mine Action Standards;

The Council also authorized UNMISS to use all necessary means, within the limits of its capacity and in the areas where its units are deployed, to carry out its protection mandate as set out in paragraphs 3 (b) (iv), 3 (b) (v), and 3 (b) (vi) of the resolution.

(ii) *Changes in the mandate and/or extensions of time limits of ongoing peacekeeping operations or missions in 2011*

a. Cyprus

The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established by Security Council resolution 186 (1964) of 4 March 1964.[10] The Security Council decided by resolutions 1986 (2011) of 13 June 2011 and 2026 (2011) of 14 December 2011 to extend the mandate of UNFICYP until 15 December 2011 and 19 July 2012, respectively.

b. Syria and Israel

The United Nations Disengagement Observer Force (UNDOF) was established by Security Council resolution 350 (1974) of 31 March 1974.[11] The Security Council renewed the mandate of UNDOF by resolutions 1994 (2011) of 30 June 2011 and 2028 (2011) of 21 December 2011, until 31 December 2011 and 30 June 2012, 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.[12] Following a request by the Lebanese Foreign Minister, presented in a letter dated 22 July 2011 addressed to the Secretary-General, the Secretary-General recommended the Security Council to consider the renewal of UNIFIL for a further period of one year.[13] The Security Council renewed the mandate of UNIFIL by resolution 2004 (2011) of 30 August 2011, until 31 August 2012.

d. Western Sahara

The United Nations Mission for the Referendum in Western Sahara (MINURSO) was established by Security Council resolution 690 (1991) of 29 April 1991.[14] By resolution 1979 (2011) of 27 April 2011, the Security Council decided to extend the mandate of MINURSO until 30 April 2012.

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[10] For more information about UNFICYP, see the UNFICYP website at http://www.unficyp.org and Reports of the Secretary-General on the United Nations operation in Cyprus covering developments from 21 November 2010 to 20 May 2011 (S/2011/332), and covering developments from 21 May 2011 to 20 November 2011 (S/2011/746 and Corr.1).

[11] 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 2011 (S/2011/359), and for the period from 1 July to 31 December 2011 (S/2011/748).

[12] For more information about UNIFIL, see the UNIFIL website at http://unifil.unmissions.org; the fifteenth and sixteenth reports of the Secretary-General on the implementation of Security Council resolution 1701 (2006), documents S/2011/91 and S/2011/406, respectively; and the seventeenth report, document S/2011/715.

[13] Letter dated 5 August 2011 from the Secretary-General addressed to the President of the Security Council (S/2011/488).

[14] For more information about MINURSO, see the website of MINURSO at http://minurso.unmissions.org/ and Report of the Secretary-General on the situation concerning Western Sahara, document S/2011/249.

In a letter from the Secretary-General addressed to the President of the Security Council dated 22 July 2011, the Secretary-General informed the Council of his intention to appoint Major General Abdul Hafiz from Bangladesh as Force Commander of MINURSO.[15]

e. Liberia

The United Nations Mission in Liberia (UNMIL) was established by Security Council resolution 1509 (2003) of 19 September 2003.[16] The Security Council decided by resolution 2008 (2011) of 16 September 2011, while acting under Chapter VII of the Charter of the United Nations, to extend the mandate of UNMIL for one year, until 30 September 2012.

In resolution 1971 (2011) of 3 March 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to discontinue the authorization granted to UNMIL by paragraph 5 of resolution 1626 (2005) to deploy United Nations military personnel to Sierra Leone to provide security for the Special Court for Sierra Leone, and requested UNMIL to withdraw such personnel by 7 March 2011.[17] The Council further decided to discontinue the authorization and request to UNMIL in paragraph 7 of resolution 1626 (2005) to evacuate officials of the Special Court for Sierra Leone in the event of a serious security crisis.

In resolution 1992 (2011) of 29 June 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, *inter alia*, authorized the Secretary-General to extend until 30 September 2011, the redeployment from UNMIL to the United Nations Operation in Côte d'Ivoire (UNOCI) of three armed helicopters with crews. The Council also requested the Secretary-General to provide it with an updated analysis and recommendations on the inter-mission cooperation between UNMIL and UNOCI by 15 September 2011. The Secretary-General provided such an analysis with recommendations in a letter dated 15 September addressed to the President of the Security Council.[18] The President of the Security Council informed the Secretary-General, in a letter dated 27 September 2011, of the Council's consent to the inter-mission transfer between UNMIL and UNOCI.[19]

In a letter dated 22 November 2011 from the Secretary-General addressed to the President of the Security Council,[20] in anticipation of a deterioration of the already volatile security situation, in particular in Abidjan and in western Côte d'Ivoire, where elections risked exacerbating political grievances and existing tensions, including between communities, which could lead to violence in various parts of the country, the Secretary-General recommended that the Security Council authorize the temporary transfer from UNMIL

[15] S/2011/459; see also S/2011/460.

[16] For more information about UNMIL, see the website of UNMIL at http://unmil.unmissions.org/; Twenty-second and twenty-third progress reports of the Secretary-General on the United Nations Mission in Liberia, documents S/2011/72 and S/2011/497, respectively.

[17] See also Letter dated 11 February 2011 from the Secretary-General addressed to the President of the Security Council (S/2011/74).

[18] S/2011/577.

[19] S/2011/594.

[20] S/2011/730.

to UNOCI of the three Mi-24 armed helicopters and the two military utility helicopters, to be operational as of 4 December and up to 31 December 2011 in order to enhance the capacity of UNOCI to meet the necessary requirements during the electoral period, and to authorize the temporary transfer of one infantry company. In a letter dated 30 November 2011 from the President of the Security Council addressed to the Secretary-General, these requests were noted and approval granted.[21]

In resolution 2008 (2011) of 16 September 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, that UNMIL should continue to assist the Liberian Government, as requested, with the 2011 general presidential and legislative elections, by providing logistical support, particularly to facilitate access to remote areas, coordinating international electoral assistance, and supporting Liberian institutions and political parties in creating an atmosphere conducive to the conduct of peaceful elections. The Council also recalled its endorsement of the Secretary-General's recommendation that the conduct of free, fair, and peaceful elections be a core benchmark for UNMIL's future drawdown. The Council requested that the Secretary-General deploy a technical assessment mission to Liberia after the inauguration of the elected Government in 2012 that should focus on the security transition, and also develop detailed proposals for the next stages of UNMIL's drawdown. The Council called upon the Government of Liberia, in coordination with UNMIL, the United Nations country team and international partners to continue to develop national security and rule of law institutions that are fully and independently operational. Furthermore, the Council requested UNMIL to continue to support the participation of women in conflict prevention, conflict resolution and peacebuilding.

f. Côte d'Ivoire[22]

The United Nations Operation in Côte d'Ivoire (UNOCI) was established by Security Council resolution 1528 (2004) of 27 February 2004.[23] By resolutions 1981 (2011) of 13 May 2011, and 2000 (2011) of 27 July 2011, 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), to 31 July 2011 and 31 July 2012, respectively.

By resolution 1967 (2011) of 19 January 2011, the Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to authorize the deployment of an additional 2,000 military personnel to UNOCI until 30 June 2011, and to authorize the Secretary-General to extend by up to four additional weeks the temporary redeployment from UNMIL to UNOCI of three infantry companies and one aviation unit comprised of two military utility helicopters.

In resolution 1968 (2011) of 16 February 2011, the Council, acting under Chapter VII of the Charter of the United Nations, decided to authorize the Secretary-General to extend up to three months the temporary redeployment from UNMIL to UNOCI of three infantry

[21] S/2011/747.

[22] See subsections (c) and (f) below on sanctions and other bodies as concerning Cote d'Ivoire.

[23] 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, documents S/2011/211, S/2011/387, and S/2011/807.

companies, one aviation unit comprised of two military utility helicopters and three armed helicopters with crews. This authorization was extended to 30 June 2011 by resolution 1981 (2011) of 13 May 2011.

By resolution 1975 (2011) of 30 March 2011, the Council recalled, *inter alia*, its authorization of UNOCI and stressed its full support given to the UNOCI, while impartially implementing its mandate, to use all necessary means to carry out its mandate to protect civilians under imminent threat of physical violence, within its capabilities and its areas of deployment, including to prevent the use of heavy weapons against the civilian population.

In resolution 1992 (2011) of 29 June 2011, the Council decided, acting under Chapter VII of the Charter of the United Nations, to authorize the Secretary-General to extend until 30 September 2011 the redeployment from UNMIL to UNOCI of three armed helicopters with crews, and decided to extend the deployment of an additional 2,000 military personnel to UNOCI, as set out in resolution 1967 (2011) as well as the temporary additional military and police capabilities authorized by resolution 1942 (2010), until 31 July 2011.

In a letter dated 12 April 2011 from the Secretary-General addressed to the President of the Security Council,[24] the Secretary-General recommended a temporary reconfiguration of the police component of UNOCI. Within the Mission's current authorized police strength, 40 individual police officers whose positions were at that time currently unencumbered would be temporarily replaced by 40 formed police unit personnel. On 14 April 2011, the President of the Security Council informed the Secretary-General in a letter that this course had been approved by the Council.[25]

In resolution 2000 (2011) of 27 July 2011, the Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to authorize the maintaining of the strength of the components of UNOCI, and to authorize an increase of the individual police personnel by 205 advisers, with the appropriate skills, who were to be experts in the specialized areas identified in the Secretary General's report,[26] to be accommodated through appropriate adjustments to the military and police strength of the Mission, within the authorized strength of military and police personnel of UNOCI. The Council also decided, *inter alia*, that the mandate of UNOCI would include, *inter alia*: protection and security, including protection of civilians, addressing remaining security threats and border-related challenges, monitoring of the arms embargo, collection of weapons, disarmament, demobilization and reintegration programme (DDR), reconstitution and reform of security and rule of law institutions, support for efforts to promote and protect human rights, and support humanitarian assistance; peace and electoral process, including support for the organization and conduct of open, timely, free, fair and transparent legislative elections, public information, redeployment of State administration and the extension of State authority throughout the country, facilitation, and protection of United Nations personnel. The Council further decided to continue its authorization given to UNOCI to use all necessary means to carry out its mandate, within its capabilities and its areas of deployment, pursuant to resolutions 1933 (2010) and 1962 (2010).

[24] S/2011/247.

[25] S/2011/248.

[26] S/2011/387.

Mr. Albert Gerard Koenders (Netherlands) replaced Mr. Choi Young-jin (Republic of Korea) as the Secretary-General's Special Representative for Cote d'Ivoire and Head of UNOCI on 31 August 2011.[27]

g. Haiti

The United Nations Stabilization Mission in Haiti (MINUSTAH) was established by Security Council resolution 1542 (2004) of 30 April 2004.[28] By its resolution 2012 (2011) of 14 October 2011, 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) and 1944 (2010) until 15 October 2012, with the intention of further renewal.

In resolution 2012 (2011), the Security Council decided that MINUSTAH's overall force levels would consist of up to 7,340 troops of all ranks and a police component of up to 3,241 and reaffirmed the mission's human rights mandate.

In a letter dated 23 March 2011 from the Secretary-General addressed to the President of the Security Council,[29] the Secretary-General informed the Council of his intention to appoint Major General Luiz Eduardo Ramos Pereira from Brazil as the new Force Commander of MINUSTAH, replacing Major General Luiz Guilherme Paul Cruz, also from Brazil, who completed his assignment on 31 March 2011.

In a letter dated 12 May 2011 from the Secretary-General addressed to the President of the Security Council,[30] the Secretary-General informed the Council of his intention to appoint Mr. Mariano Fernández from Chile as his Special Representative and Head of MINUSTAH, to replace Mr. Edmund Mulet from Guatemala, who completed his assignment on 31 May 2011.

h. Timor-Leste

The United Nations Integrated Mission in Timor-Leste (UNMIT) was established by Security-Council resolution 1704 (2006) of 25 August 2006.[31] The mandate of UNMIT was extended by Security Council resolution 1969 (2011) of 24 February 2011, until 26 February 2012. The Council also requested, *inter alia*, UNMIT to extend the necessary support,

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[27] See S/2011/468 and S/2011/469.

[28] 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, documents S/2011/183 and S/2011/540.

[29] S/2011/187.

[30] S/2011/301.

[31] 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 21 September 2010 to 7 January 2011), document S/2011/32; Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 8 January 2011 to 20 September 2011), document S/2011/641 (for the period from 21 September 2010 to 7 January 2011) and Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 20 September 2011 to 6 January 2012), document S/2012/43.

within its current mandate, for the preparation of the parliamentary and presidential elections of 2012.

i. 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.[32] On 29 July 2011, the Security Council decided, by resolution 2003 (2011), to extend the mandate of UNAMID for a further 12 months, until 31 July 2012. In the same resolution, the Council, *inter alia*, encouraged the increasingly full implementation by UNAMID of its Chapter VII mandate and 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, including through proactive deployment and patrols in areas at high risk of conflict, securing IDP camps and adjacent areas, and implementation of a mission-wide early warning strategy and capacity and (b) ensuring safe, timely and unhindered humanitarian access, and the safety and security of humanitarian personnel and humanitarian activities, so as to facilitate the unimpeded delivery of humanitarian assistance throughout Darfur.

In a letter dated 27 July 2011 from the Secretary-General addressed to the President of the Security Council,[33] the Secretary-General transmitted a letter from the Chairperson of the African Union Commission requesting the transmission of the communiqué of the 286th meeting of the African Union Peace and Security Council, which took place on 19 July 2011.[34] At the 286th meeting, the African Union Peace and Security Council decided, *inter alia*, to extend the mandate of UNAMID for a further period of 12 months and requested the United Nations Security Council to do the same.

j. Democratic Republic of the Congo

The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was established by Security Council resolution 1279 (1999) of 30 November 1999. By resolution 1925 (2010) of 28 May 2010, the Council, acting under Chapter VII of the Charter of the United Nations, 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.[35] The Security Council decided to extend the mandate of MONUSCO until 30 June 2012 by resolution 1991 (2011) of 28 June 2011.

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[32] For more information about UNAMID, see the website of UNAMID at http://unamid.unmissions.org and Reports of the Secretary-General UNAMID, documents S/2011/22, S/2011/244, S/2011/422, S/2011/643 and S/2011/814. See also Report of the Secretary-General on the implementation of the Darfur political process, document S/2011/252.

[33] S/2011/466.

[34] For the communiqué of the 286th meeting, see letter dated 27 July 2011 from the Secretary-General addressed to the President of the Security Council (S/2011/466), enclosure.

[35] For more information about MONUSCO, see the website of MONUSCO at http://monusco.unmissions.org and Reports of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, documents S/2011/20, S/2011/298, S/2011/656 and S/2012/65, respectively.

In resolution 1991 (2011), the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, that MONUSCO should support the organisation and conduct of national, provincial and local elections, through the provision of technical and logistical support as requested by the Congolese authorities. The Council also called upon MONUSCO and the UN Country Team to collect information on and identify potential threats against the civilian population, and requested MONUSCO, consistent with the authorization provided by resolution 1925 (2010), to keep a reserve force capable of redeploying rapidly in the country within its mandated strength.

In a letter dated 20 September 2011 from the Secretary-General addressed to the President of the Security Council,[36] the Secretary-General informed the Security Council of the acute shortage of military helicopters in MONUSCO and as a result, the Mission was no longer able to carry out critical parts of its priority mandated tasks, including in relation to the protection of civilians, providing support to the elections and putting an end to the presence of armed groups.

(iii) *Other ongoing peacekeeping operations or missions*

a. Middle East

The United Nations Truce Supervision Organization (UNTSO) was established by resolution 50 (1948) on 29 May 1948 in order to supervise the observation of the truce in Palestine. UNTSO continued to operate in 2011.[37] In a letter dated 23 March 2011 from the Secretary-General addressed to the President of the Security Council,[38] the Secretary-General appointed Major General Juha Kilpia (Finland) as the Head of Mission and Chief of Staff of UNTSO; he replaced Major General Robert Mood (Norway), who completed his assignment in February 2011.

b. India and Pakistan

The United Nations Military Observer Group in India and Pakistan (UNMOGIP) was established by resolutions 39 (1948) and 47 (1948) of 20 January and 21 April respectively, in order to supervise the ceasefire in the State of Jammu and Kashmir.[39] UNMOGIP continued to operate in 2011. In a letter dated 14 July 2011 from the Secretary-General addressed to the President of the Security Council, Thailand was added to the list of contributors to UNMOGIP.[40]

c. Kosovo

The United Nations Interim Administration Mission in Kosovo (UNMIK) was established by resolution 1244 (1999) on 10 June 1999, and was mandated to help ensure con-

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[36] S/2011/589.

[37] For more information on UNTSO, see http://untso.unmissions.org/.

[38] S/2011/189.

[39] For more information on UNMOGIP, see http://www.un.org/en/peacekeeping/missions/unmogip/.

[40] S/2011/431.

ditions for a peaceful and normal life for all inhabitants of Kosovo and advance regional stability in the western Balkans.[41] UNMIK continued to operate in 2011. In a letter dated 7 October 2011 from the President of the Security Council addressed to the Secretary-General, the Security Council acknowledged the Secretary-General's appointment of Farid Zarif (Afghanistan) as the Special Representative for Kosovo and Head of UNMIK.[42]

(iv) *Peacekeeping missions or operations concluded in 2011*

The Sudan

The United Nations Mission in the Sudan (UNMIS) was established by Security Council resolution 1590 (2005) on 24 March 2005.[43] In resolution 1978 (2011) of 27 April 2011, the Security Council decided to extend the mandate of UNMIS until 9 July 2011 and announced its intention to establish a mission to succeed UNMIS. The Minister for Foreign Affairs of the Sudan noted in a letter to the Secretary-General on 27 May 2011[44] that the interim period as stipulated in the Comprehensive Peace Agreement, which extended the mandate of UNMIS in the Sudan up to 9 July 2011, was coming to an end and conveyed the decision of the Government of the Sudan to terminate the presence of UNMIS as of 9 July 2011.

On 9 July 2011, South Sudan became an independent State and in resolution 1997 (2011) of 11 July 2011, the Council emphasized the need for the orderly withdrawal of UNMIS following the termination of the Mission's mandate on that same day, and decided to withdraw UNMIS effective 11 July 2011. In resolution 1990 (2011) of 27 June 2011, the Security Council established the United Nations Interim Security Force for Abyei (UNISFA) and in resolution 1996 (2011) of 8 July 2011, the Council established, as of 9 July 2011, the United Nations Mission in the Republic of South Sudan (UNMISS). By resolution 1996 (2011), the Council also requested the Secretary-General to transfer appropriate functions performed by UNMIS to UNMISS. In resolution 1997 (2011), the Council underscored the need for a smooth transition from UNMIS to UNISFA and to UNMISS.[45]

(*b*) Political and peacebuilding missions

(i) *Political and peacebuilding missions established in 2011*

a. Burundi

In resolution 1959 (2010) of 16 December 2010, the Security Council requested the Secretary-General to establish the United Nations Integrated Office in Burundi (BINUB),

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[41] For more information on UNMIK, see http://www.unmikonline.org/pages/default.aspx; see Reports of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, documents S/2011/43, S/2011/281, S/2011/514 and S/2011/675.

[42] See S/2011/631 and S/2011/632.

[43] For more information about UNMIS, see the website of UNMIS at http://unmis.unmissions.org; and Reports of the Secretary-General on the Sudan, documents S/2011/239 and S/2011/314.

[44] S/2011/333.

[45] For more information on UNISFA and UNIMISS, see subsection (i)(a) and (i)(b) of the present section.

as recommended in his report,[46] for an initial period of 12 months beginning on 1 January 2011.[47] The United Nations Office in Burundi (BNUB) was established to support the progress achieved in recent years by all national stakeholders in consolidating peace, democracy and development in Burundi. In the resolution, the Council requested BNUB to focus on and support the Government of Burundi in the following areas:

(*a*) Strengthening the independence, capacities and legal frameworks of key national institutions, in particular judicial and parliamentary institutions, in line with international standards and principles;

(*b*) 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;

(*c*) 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;

(*d*) Promoting and protecting human rights, including strengthening national capacities in that area, as well as national civil society;

(*e*) Ensuring that all strategies and policies with respect to public finance and the economic sector, in particular the next Poverty Reduction Strategy Paper (PRSP), had a focus on peacebuilding and equitable growth, addressing specifically the needs of the most vulnerable population, and advocating for resource mobilization for Burundi;

(*f*) Providing support to Burundi as Chair of the East African Community in 2011 as well as providing advice, as requested, on regional integration issues.

In resolution 2027 (2011) of 20 December 2011, the Council decided to extend the mandate of BNUB until 15 February 2013, and that the mandate should additionally focus on supporting the efforts of the Government and the international community to focus on the socio-economic development of women and youth and the socio-economic reintegration of conflict-affected populations in particular, and advocating for resource mobilization for Burundi; and providing support to Burundi's deepening regional integration, as requested.

b. Central African Region

The United Nations Regional Office for Central Africa (UNOCA) was established by an exchange of letters completed in August 2010 between the Secretary-General and the Security Council[48] and was located in Libreville, Gabon. UNOCA was inaugurated on 2 March 2011 and had an initial two-year mandate, to be reviewed after 18 months. UNOCA was the third political office attached to the United Nations Department of Political Affairs.

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[46] Seventh report of the Secretary-General on the United Nations Integrated Office in Burundi, document S/2010/608.

[47] For more information about BNUB, see the BNUB website at http://bnub.unmissions.org, and Report of the Secretary-General on the United Nations Office in Burundi, document S/2011/751.

[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).

The core functions of the Office were set out in a letter dated 11 December 2009 from the Secretary-General addressed to the President of the Security Council[49] and were as follows: to cooperate 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 Central African subregion; to carry 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; to strengthen the Department of Political Affairs' capacity to advise the Secretary-General on matters relating to peace and security in the region; to enhance 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 to report to Headquarters on developments of subregional significance.

In a letter, dated 11 March 2011, from the Secretary-General addressed to the President of the Security Council,[50] the Secretary-General informed the Council of his intention to appoint Mr. Abou Moussa (Chad) as his new Special Representative for Central Africa and Head of UNOCA.

c. Libya

The United Nations Support Mission in Libya (UNSMIL) was established by resolution 2009 (2011) on 16 September 2011, with the Council acting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41. The Council decided that UNSMIL should be established under the leadership of a Special Representative of the Secretary-General for an initial period of three months, and decided further that the mandate of UNSMIL would be to assist and support Libyan national efforts to: restore public security and order and promote the rule of law; undertake inclusive political dialogue, promote national reconciliation, and embark upon the constitution-making and electoral process; extend state authority, including through strengthening emerging accountable institutions and the restoration of public services; promote and protect human rights, particularly for those belonging to vulnerable groups, and support transitional justice; take the immediate steps required to initiate economic recovery; and coordinate support that may be requested from other multilateral and bilateral actors as appropriate.

In resolution 2022 (2011) of 2 December 2011, the Security Council decided to extend the mandate of UNSMIL until 16 March 2012, and further decided that the mandate of UNSMIL would in addition include, in coordination and consultation with the transitional Government of Libya, assisting and supporting Libyan national efforts to address the threats of proliferation of all arms and related materiel of all types, in particular manportable surface to air missiles.

[49] S/2009/697.

[50] S/2011/130.

(ii) *Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions in 2011*

a. Afghanistan

The United Nations Assistance Mission in Afghanistan (UNAMA) was established by Security Council resolution 1401 (2002) of 28 March 2002. On 22 March 2011, the Security Council decided by resolution 1974 (2011) to extend the mandate of UNAMA until 23 March 2012.[51]

In the same resolution, the Security Council, *inter alia*, decided that UNAMA and the Special Representative of the Secretary-General, within their mandates and guided by the principles of reinforcing Afghan sovereignty, ownership and leadership, would continue to lead the international civilian efforts. The Council also requested the Secretary-General to conduct a comprehensive review of UNAMA's mandated activities and the United Nations' support in Afghanistan, including UNAMA's presence throughout the country, in consultation with the Afghan Government and relevant international stakeholders, by the end of 2011, with the aim of strengthening national ownership and leadership consistent with the Kabul Process.[52]

b. Iraq

The United Nations Assistance Mission for Iraq (UNAMI) was established by Security Council resolution 1500 (2003) of 14 August 2003. By resolution 2001 (2011) of 28 July 2011, the Security Council decided to extend the mandate of UNAMI for a period of twelve months.[53] The Council also decided, *inter alia*, that the Special Representative of the Secretary-General and UNAMI, at the request of the Government of Iraq, and taking into account the letter from the Minister of Foreign Affairs of Iraq to the Secretary-General,[54] should continue to pursue their mandate as stipulated in resolution 1936 (2010). The Council also expressed its intention to review the mandate of UNAMI in twelve months or sooner, if requested by the Government of Iraq.

On 4 August 2011, the Secretary-General announced his intention to appoint Mr. Martin Kobler of Germany as his Special Representative for UNAMI.[55]

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[51] 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, documents A/65/783–S/2011/120, A/65/873–S/2011/381, A/66/369–S/2011/590 and A/66/604–S/2011/772; and Reports of the Secretary-General on children and armed conflict in Afghanistan, documents S/2011/55 and A/65/820-S/2011/250.

[52] See The situation in Afghanistan and its implications for international peace and security: Reports of the Secretary-General, documents A/65/873–S/2011/381, A/66/369–S/2011/590 and A/66/604–S/2011/772.

[53] For more information about the activities of UNAMI, see the website of UNAMI at http://www.uniraq.org, and Second and Third reports of the Secretary-General pursuant to paragraph 6 of resolution 1936 (2010), documents S/2011/213 and S/2011/435, respectively.

[54] S/2011/464, annex.

[55] See S/2011/502 and S/2011/503.

c. 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 14 September 2011, the Security Council decided by resolution 2005 (2010) to extend the mandate of UNIPSIL until 15 September 2012.[56]

d. 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).[57] On 21 December 2011, the Security Council adopted resolution 2030 (2011), by which it decided to extend the mandate of UNIOGBIS as established in paragraph 3 of resolution 1876 (2009), until 28 February 2013.

e. 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.[58] In resolution 2031 (2011) of 21 December 2011, the Security Council decided to extend the mandate of BINUCA as recommended by the Secretary-General in his report[59] until 31 January 2013.

(iii) *Other ongoing political and peacebuilding missions in 2011*

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,[60] continued to operate throughout 2011.[61]

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[56] For more information about the activities of UNIPSIL, see the website of UNIPSIL at http://unipsil.unmissions.org; see Sixth and Seventh reports of the Secretary-General on the United Nations Integrated Peacebuilding Office in Sierra Leone, documents S/2011/119 and S/2011/554, respectively.

[57] For more information on UNIOGBIS, see http://uniogbis.unmissions.org/; see Report of the Secretary-General on developments in Guinea-Bissau and on the activities of the United Nations Integrated Peacebuilding Office in that country, documents S/2011/73, S/2011/370 and S/2011/655.

[58] Ninth report of the Secretary-General on the United Nations Mission in the Central African Republic, document S/2000/24, and Statement by the President of the Security Council, 10 February 2000 (S/PRST/2000/5). For more information on BINUCA, see http://binuca.unmissions.org/.

[59] See Report of the Secretary-General on the situation in the Central African Republic and on the activities of the United Nations Integrated Peacebuilding Office in that country, documents S/2011/311 and S/2011/739.

[60] Exchange of letters between the Secretary-General and the Security Council, documents S/1999/983 and S/1999/984.

[61] 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.[62] The title of the representative was subsequently changed to Personal Representative for southern Lebanon and to Special Coordinator for Lebanon, in 2005[63] and 2007,[64] respectively. The Special Coordinator for Lebanon continued to operate throughout 2011.[65]

c. West Africa

The United Nations Office for West Africa (UNOWA), originally established by the Secretary-General in 2002,[66] with subsequent extensions of its mandate in 2004[67] and 2007,[68] continued to operate through 2010. The Secretary-General submitted two reports on UNOWA in 2011.[69] 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.[70]

d. Somalia

In 2011, two missions were active in Somalia. First, the United Nations Political Office for Somalia (UNPOS),[71] created by the Secretary-General on 15 April 1995, which aimed, 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.

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[62] Report of the Secretary-General on the United Nations Interim Force in Lebanon (for the period from 17 January to 17 July 2000), document S/2000/718.

[63] Letter dated 29 March 2005 from the Secretary-General to the President of the Security Council (S/2005/216).

[64] Letter dated 8 February 2007 from the Secretary-General to the President of the Security Council (S/2007/85).

[65] 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.

[66] 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).

[67] 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).

[68] 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).

[69] Reports of the Secretary-General on the United Nations Office for West Africa, documents S/2011/388 and S/2011/811. For more information about the activities of UNOWA, see, the website of UNOWA at http://unowa.unmissions.org.

[70] 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).

[71] For more information about UNPOS, see the UNPOS website at http://unpos.unmissions.org and Reports of the Secretary-General on the situation in Somalia, documents S/2011/277, S/2011/549 and S/2011/759. See also Report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts, documents S/2011/360 and S/2012/50.

Second, the United Nations Support Office for AMISOM (UNSOA) which was a field support operation led by the United Nations Department of Field Support (DFS). Its mandate, as provided by Security Council resolution 1863 (2009), was 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.

e. Central Asia

The United Nations Regional Centre for Preventive Diplomacy for Central Asia (UNRCCA) was established on 10 December 2007 by a Letter dated 7 May 2007 from the Secretary-General to the President of the Security Council.[72] UNRCCA continued to function throughout 2011.[73]

(iv) *Political and peacebuilding missions concluded in 2011*

Nepal

The United Nations Political Mission in Nepal (UNMIN) was established pursuant to Security Council resolution 1740 (2007) of 23 January 2007. On 15 September 2010, the Security Council once more decided, by resolution 1939 (2010), in line with the request from the Government of Nepal,[74] 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.

(*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 included 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 2011, 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 took note of the

[72] S/2007/279.

[73] For more information about UNRCCA, see the UNRCCA website at http://unrcca.unmissions.org/.

[74] 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).

Secretary-General's request for resources from the regular budget for the Mixed Commission for the period of 1 January to 31 December 2011, and urged members of the Mixed Commission to work with international donors to seek further voluntary contributions.[75]

(ii) *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.[76] 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. The Panel continued its work up to and through the referenda held in the Sudan of 9 to 15 January 2011.

(iii) *Commission of Inquiry to Cote d'Ivoire*

In resolution 16/25 of 25 March 2011,[77] the Human Rights Council created an independent international commission of inquiry to investigate the facts and circumstances surrounding the allegations of serious abuses and violations of human rights committed in Côte d'Ivoire following the presidential election of 28 November 2010, in order to identify those responsible for such acts and to bring them to justice, and to present its findings to the Council at its seventeenth session, and called upon all Ivorian parties to cooperate fully with the commission of inquiry. The Commission presented its report and recommendations to the Human Rights Council on 14 June 2011.[78]

(iv) *Commission of Inquiry to Libya*

In resolution S-15/1 of 25 February 2011, the Human Rights Council decided to urgently dispatch an independent international commission of inquiry, to be appointed by the President of the Council, to investigate all alleged violations of international human rights law in Libya, to establish the facts and circumstances of such violations and of the crimes perpetrated, and, where possible identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible were held accountable.[79] The Commissioners were Judge Philippe Kirsch (Chair), Prof. Cherif M. Bassiouni (Egypt) and Ms. Asma Khader (Jordan). The

[75] 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).

[76] 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).

[77] A/HRC/RES/16/25.

[78] See A/HRC/17/49; see also Security Council resolution 2000(2011) of 27 July 2011.

[79] See also Security Council resolution 1970 (2011) of 26 February 2011.

Commission presented its first report to the Human Rights Council in June 2011.[80] The Human Rights Council extended the mandate of the Commission, and requested it to present an oral update in September 2011 and its final report in March 2012.[81]

(v) *Commissions of Inquiry to Syria*

In resolution S-16/1, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights to dispatch urgently a mission to the Syrian Arab Republic to investigate all alleged violations of international human rights law and to establish the facts and circumstances of such violations and of the crimes perpetrated, with a view to avoiding impunity and ensuring full accountability, and to provide a preliminary report and oral update on the situation of human rights in the Syrian Arab Republic to the Human Rights Council at its seventeenth session.[82] The final report of this Commission was presented to the Human Rights Council at its eighteenth regular session[83] on 15 September 2011.

In its resolution S-17/1, adopted at the seventeenth special session of the Human Rights Council, the Council created an independent international commission of inquiry to investigate all alleged violations of international human rights law since July 2011 in the Syrian Arab Republic, to establish the facts and circumstances that may amount to such violations and of the crimes perpetrated and, where possible, to identify those responsible with a view of ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable. Its report to the Human Rights Council was presented on 23 November 2011.[84]

(vi) *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,[85] 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.[86]

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[80] A/HRC/17/44.

[81] A/HRC/17/L.3.

[82] A/HRC/17/CRP.1.

[83] A/HRC/18/53.

[84] A/HRC/S-17/2/Add.1.

[85] Statement of the President of the Security Council, dated 1 June 2010 (S/PRST/2010/9).

[86] Press Release, Secretary-General, Secretary-General Receives Panel of Inquiry's Report on Flotilla Incident, U.N. Press Release SG/SM 13771.

(*d*) Missions of the Security Council

Ethiopia, Sudan and Kenya

In a letter dated 18 May 2011 from the President of the Security Council addressed to the Secretary-General,[87] the President informed the Secretary-General of the Council's decision to send a mission to Ethiopia, Sudan and Kenya from 19 to 26 May 2011.

According to its terms of reference,[88] the mission could continue to develop an effective partnership and enhance cooperation between the African Union and the United Nations through an exchange of views on issues of interest to both the United Nations Security Council and the African Union Peace and Security Council and to exchange views on situations of interest to both organs, which included but were not limited to: a brief overview of the peace and security situation in Africa and the situations in the Sudan, Somalia, Libya, and Côte d'Ivoire.

The mission to the Sudan, led by Ambassador Gérard Araud of France, *inter alia*, reiterated the importance of the parties to the Comprehensive Peace Agreement reaching an agreement on Abyei's post-Agreement status and acknowledged that it was the responsibility of the parties, including during their negotiations under the auspices of the African Union High-Level Implementation Panel and its Chair, President Thabo Mbeki, to reach agreement on the status of Abyei.

The mission to Nairobi, led by Ambassadors Mark Lyall Grant of the United Kingdom of Great Britain and Northern Ireland and Baso Sangqu of South Africa, *inter alia*, expressed deep concern about the continuing violations and abuses committed against children in Somalia by parties to the conflict, and urged the immediate implementation of all conclusions of the Working Group on Children and Armed Conflict in Somalia.

(*e*) Action of Member States authorized by the Security Council

(i) *Authorization by the Security Council in 2011*

a. Libya

In its resolution 1973 (2011) of 17 March 2011, the Security Council, acting under Chapter VII of the Charter, *inter alia*, authorized Member States that had notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory. The Council also authorized Member States that had notified the Secretary-General and the Secretary-General of the League of Arab States, acting nationally or through regional organizations or arrangements, to take all necessary measures to enforce compliance with

[87] Letter dated 18 May 2011 from the President of the Security Council addressed to the Secretary-General (S/2011/319).

[88] See annex to Letter dated 18 May 2011 from the President of the Security Council addressed to the Secretary-General (S/2011/319).

a ban on flights imposed by paragraph 6 of the resolution. The Council called upon all Member States, acting nationally or through regional organizations or arrangements, to provide assistance, including any necessary overflight approvals, for the purposes of implementing paragraphs 4, 6, 7 and 8 of the resolution (relating to the protection of civilians and the no fly zone). Moreover, the Council called upon all Member States, in particular States of the region, acting nationally or through regional organisations or arrangements, in order to ensure strict implementation of the arms embargo established by paragraphs 9 and 10 of resolution 1970 (2011), to inspect in their territory, including seaports and airports, and on the high seas, vessels and aircraft bound to or from the Libyan Arab Jamahiriya, if the State concerned had information that provided reasonable grounds to believe that the cargo contained items the supply, sale, transfer or export of which was prohibited by paragraphs 9 or 10 of resolution 1970 (2011) as modified by resolution 1973 (2011), including the provision of armed mercenary personnel, called upon all flag States of such vessels and aircraft to cooperate with such inspections and authorized Member States to use all measures commensurate to the specific circumstances to carry out such inspections. Moreover, the Council decided that all States should deny permission to any aircraft registered in the Libyan Arab Jamahiriya or owned or operated by Libyan nationals or companies to take off from, land in or overfly their territory unless the particular flight had been approved in advance by the Committee, or in the case of an emergency landing.

In resolution 2009 (2011) of 16 September 2011, the Security Council, acting under Chapter VII of the Charter, *inter alia*, took note of the improved situation in Libya, emphasized its intention to keep the measures imposed by paragraphs 6 to 12 of resolution 1973 (2011) relating to the no fly zone under continuous review and underlined its readiness, as appropriate and when circumstances permitted, to lift those measures and to terminate authorization given to Member States in paragraph 4 of resolution 1973 (2011) relating to the protection of civilians in consultation with the Libyan authorities. The Council furthermore decided that the measures in paragraph 17 of resolution 1973 (2011) relating to a ban on flights should cease to have effect from the date of the resolution.

In resolution 2016 (2011) of 27 October 2011, the Security Council, acting under Chapter VII of the Charter, *inter alia*, welcomed the positive developments in Libya which would improve the prospects for a democratic, peaceful and prosperous future there, and decided that the provisions of paragraphs 4 and 5 of resolution 1973 (2011), focused on the protection of civilians, would be terminated from 23h59 Libyan local time on 31 October 2011; the Council decided also that the provisions of paragraphs 6 to 12 of resolution 1973 (2011), concerning the no-fly zone, would be terminated from 23h59 Libyan local time on 31 October 2011.

(ii) *Changes in authorization and/or extension of time limits in 2011*

a. Afghanistan

In its resolution 2011 (2011) of 12 October 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, 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 2012. The Council further authorized Member States participating in ISAF to take all necessary measures to

fulfil its mandate and welcomed the agreement between the Government of Afghanistan and countries contributing to ISAF to gradually transfer lead security responsibility in Afghanistan to the Afghan Government country-wide by the end of 2014 and the start of the transition process in July 2011.

b. Bosnia and Herzegovina

By its resolution 2019 (2011) of 16 November 2011, 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 EU to establish for a further period of twelve months, starting from the date of the adoption of the resolution, a multinational stabilization force (EUFOR ALTHEA) as a legal successor to SFOR under unified command and control, which would fulfil its missions in relation to the implementation of annex 1-A and annex 2 of the Peace Agreement[89] in cooperation with the NATO Headquarters presence in accordance with the arrangements agreed between NATO and the EU as communicated to the Security Council in their letters of 19 November 2004, which recognized that EUFOR ALTHEA would have the main peace stabilization role under the military aspects of the Peace Agreement.

c. Somalia[90]

By resolution 2010 (2011) of 30 September 2011, the Security Council, acting under Chapter VII of the Charter, decided to authorize the Member States of the African Union to maintain the African Union Mission in Somalia (AMISOM) until 31 October 2012. The Council decided that AMISOM would be authorized to take all necessary measures to carry out its existing mandate as set out in paragraph 9 of resolution 1772 (2007), and requested the African Union to urgently increase its force strength to its mandated level of 12,000 uniformed personnel, thereby enhancing its ability to carry out its mandate. The Council noted the recommendations on Somalia by the African Union Peace and Security Council of 13 September 2011 and underlined its intention to keep the situation on the ground under review and to take into account in its future decisions on AMISOM. The Council also recalled the African Union's Chairperson's report of 13 September 2011 and the Secretary-General's report, document S/2011/549, agreed that an increase in United Nations organizations and their staff, and other official international visitors in Mogadishu was placing additional pressure on AMISOM to provide security, escort and protection services, encouraged the United Nations to work with the African Union to develop a guard force of an appropriate size, within AMISOM's mandated troop levels, to provide security, escort and protection services to personnel from the international community, including the United Nations, and expressed its intention to review and consider thoroughly the possible need to adjust the mandated troop levels of AMISOM when the mission reached its mandated level of 12,000 troops.

[89] 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).

[90] See also, with regard to acts of piracy off the coast of Somalia, subsection (c) of this section.

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 29 July 2011, the Security Council decided, by resolution 2003 (2011), to extend the mandate of UNAMID for a further 12 months, until 31 July 2012.[91]

(*f*) Sanctions imposed under Chapter VII of the Charter of the United Nations

(i) *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 were subject to the measures imposed by resolution 1483 (2003), continued its operations in 2011 and submitted, on 30 December 2011, a report on its work in 2011 to the Security Council.[92]

(ii) *Democratic Republic of the Congo*

In resolution 2021 (2011) of 29 November 2011, the Security Council, acting under Chapter VII of the United Nations, decided, *inter alia*, to renew until 30 November 2012 the measures on arms imposed by paragraph 1 of resolution 1807 (2008) and reaffirmed the provisions of paragraphs 2, 3 and 5 of that resolution; to renew, for the period specified in paragraph 1 above, the measures on transport imposed by paragraphs 6 and 8 of resolution 1807 (2008) and reaffirmed the provisions of paragraph 7 of that resolution; to renew, for the period specified in paragraph 1 above, the financial and travel measures imposed by paragraphs 9 and 11 of resolution 1807 (2008) and reaffirmed the provisions of paragraphs 10 and 12 of that resolution regarding the individuals and entities referred to in paragraph 4 of resolution 1857 (2008).

The Group of Experts for the Democratic Republic of Congo was set up by resolution 1533 (2004) on 12 March 2004, with the mandate, *inter alia*, to examine and analyze information gathered by MONUC in the context of its monitoring mandate, and to gather and analyse all relevant information in the Democratic Republic of the Congo, countries of the region and, as necessary, in other countries, in cooperation with the governments of those countries, flows of arms and related materiel, as well as networks operating in violation of the measures imposed by paragraph 20 of resolution 1493 (2003). On 29 November 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, adopted resolution 2021 (2011), by which it decided to extend, for a period expiring on

[91] For more information about UNAMID, see subsection (a) above.

[92] Annual report of the Security Council Committee established pursuant to resolution 1518 (2003), annex to Letter dated 30 December 2011 from the Chair of the Security Council Committee established pursuant to resolution 1518 (2003) addressed to the President of the Security Council (S/2011/806).

30 November 2012, the Group of Experts and 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 2012 and again before 19 October 2012.

In a letter dated 17 February 2011 from the Secretary-General addressed to the President of the Security Council,[93] the Secretary-General informed the Security Council that he had, as requested in resolution 1952 (2010), appointed Mr. Nelson Alusala from Kenya (arms), Mr. Ruben de Koning from the Netherlands (natural resources), Mr. Steven Hege from the United States of America (armed groups), Ms. Marie Plamadiala from the Republic of Moldova (customs and logistics) and Mr. Fred Robarts from the United Kingdom (regional issues) to the Group of Experts. Mr. Steven Spittaels from Belgium (finance) was further added in April.[94]

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 2011 and submitted its final report on its work in 2011 to the Security Council.[95]

(iii) *Liberia*

By resolution 2025 (2011) of 14 December 2011, 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), by paragraphs 3, 4, 5 and 6 of resolution 1903 (2009), and by paragraph 3 of resolution 1961 (2010). 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.

In the same resolution, the Council further decided to extend the mandate of the Panel of Experts appointed pursuant to paragraph 9 of resolution 1903 (2009) for a period of 12 months from the date of adoption of this resolution to, *inter alia*, conduct two follow-up assessment missions to Liberia and neighbouring States; and to assess the impact,

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[93] Letter dated 17 February 2011 from the Secretary-General addressed to the President of the Security Council (S/2011/77).

[94] Letter dated 1 April 2011 from the Secretary-General addressed to the President of the Security Council (S/2011/219).

[95] Report of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, annex to Letter dated 29 December 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/2012/3), and interim report enclosed in the Letter dated 6 June 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/2011/345).

effectiveness, and continued need for the measures imposed by paragraph 1 of resolution 1532 (2004).[96]

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 2011. The Security Council Committee submitted its report on its work in 2011 to the Security Council.[97]

(iv) *Somalia and Eritrea*

By resolution 2002 (2011) of 29 July 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, extended the mandate and reestablished 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 1916 (2010), 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 generated 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 engaged 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 deemed appropriate; to compile a draft list of those individuals and entities that engaged in acts described in paragraphs 15 (a)-(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 deemed 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

[96] See Report of the United Nations Panel of Experts on Liberia, dated 7 December 2011 (S/2011/757).

[97] Report of the Security Council established pursuant to resolution 1521 (2003) concerning Liberia, annex to Letter dated 30 December 2011 from the Chair of the Security Council Committee established pursuant to resolution 1521 (2003) concerning the Liberia addressed to the President of the Security Council (S/2011/804), and midterm report of the Panel of Experts on Liberia enclosed in Letter dated 15 June 2011 from the Chairman of the Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia addressed to the President of the Security Council (S/2011/367).

region could 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 Council also decided in that resolution that the measures in paragraphs 1, 3, and 7 of resolution 1844 (2008) would apply to individuals, and that the provisions of paragraphs 3 and 7 of that resolution shall apply to entities, designated by the Committee, as: engaging in or providing support for acts that threatened the peace security or stability of Somalia, including acts that threatened the Djibouti Agreement of 18 August 2008 or the political process, or threatened the Transitional Federal Institutions' or AMISOM by force, which the Council considered may include, but are not limited to, the misappropriation of financial resources which undermined the TFIs' ability to fulfil their obligations in delivering services within the framework of the Djibouti Agreement; having acted in violation of the general and complete arms embargo reaffirmed in paragraph 6 of resolution 1844 (2008); obstructing the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia; being political or military leaders recruiting or using children in armed conflicts in Somalia in violation of applicable international law; being responsible for violations of applicable international law in Somalia involving the targeting of civilians including children and women in situations of armed conflict, including killing and maiming, sexual and gender-based violence, attacks on schools and hospitals and abduction and forced displacement. The Council also considered that all non-local commerce via Al-Shabaab controlled ports, that constituted financial support for a designated entity, posed a threat to the peace, stability, and security of Somalia, and thereby individuals and entities engaged in such commerce could be designated by the Committee and made subject to the targeted measures established by resolution 1844 (2008).

In a letter dated 24 August 2011 from the Secretary-General addressed to the President of the Security Council,[98] the panel's composition was set out as, for Somalia: Ms. Samira Bouslama, Tunisia (humanitarian expert); Mr. Jörg Roofthooft, Belgium (transport/maritime expert); Mr. Babatunde Abayomi Taiwo, Nigeria (arms expert); and for Eritrea: Mr. Emmanuel Deisser, Belgium (arms expert); Mr. Aurélien Llorca, France (transport/aviation expert); Mr. Ghassan Schbley, United States of America (finance expert). Mr. Matt Bryden, Canada (regional expert) was nominated to serve as Coordinator of the Monitoring Group. In a letter dated 15 November 2011 from the Secretary-General addressed to the President of the Security Council,[99] the Secretary-General appointed Ms. Kristèle Younès (Lebanon) to serve as humanitarian expert for the Somalia component of the Monitoring Group, replacing Ms. Samira Bouslama (Tunisia).

[98] S/2011/536.

[99] S/2011/720.

The Security Council Committee established pursuant to resolutions 751 (1992) and 1907 (2009) continued its operations in 2011 and submitted its report on its work in 2011 to the Security Council.[100]

(v) *Côte d'Ivoire*

By resolution 1975 (2011) of 30 March 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to adopt targeted sanctions against those individuals who met the criteria set out in resolution 1572 (2004) and subsequent resolutions, including those individuals who had been obstructing peace and reconciliation in Côte d'Ivoire, obstructing the work of UNOCI and other international actors in Côte d'Ivoire and committing serious violations of human rights and international humanitarian law, and therefore decided that the individuals listed in Annex I of that resolution would be subject to the financial and travel measures imposed by paragraphs 9 to 11 of resolution 1572 (2004), and reaffirmed its intention to consider further measures, as appropriate, including targeted sanctions against media actors who met the relevant sanctions criteria, including by inciting publicly hatred and violence.

By resolution 1980 (2011) of 28 April 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to renew until 30 April 2012 the measures on arms and the financial and travel measures imposed by paragraphs 7 to 12 of resolution 1572 (2004), paragraph 5 of resolution 1946 (2010) and paragraph 12 of resolution 1975 (2011) and further decided to renew until 30 April 2012 the measures preventing the importation by any State of all rough diamonds from Côte d'Ivoire imposed by paragraph 6 of resolution 1643 (2005).

In resolution 1980 (2011) of 28 April 2011, 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 2012.[101]

In a letter dated 13 October 2011 from the Secretary-General addressed to the President of the Security Council,[102] the Secretary-General appointed Mr. Raymond Debelle, Belgium (arms) and designated Mr. Ilhan Berkol, Turkey (customs/transport) as Coordinator of the Group. In a letter dated 20 December 2011 from the Secretary-General addressed to the President of the Security Council,[103] the Secretary-General appointed Mr. Simon Gilbert, United Kingdom of Great Britain and Northern Ireland (diamonds), to replace

[100] Annual report of the Security Council Committee established pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, annex to Letter dated 4 January 2012 from the Chair of the Security Council Committee pursuant to resolution 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council (S/2012/7).

[101] For more information on the Group of Experts, Final report of the Group of Experts submitted in accordance with paragraph 12 of Security Council resolution 1893 (2009), document S/2011/271; Report of the Group of Experts submitted in accordance with paragraph 11 of Security Council resolution 1946 (2010), document S/2011/272; Midterm report of the Group of Experts submitted in accordance with paragraph 14 of Security Council resolution 1980 (2011), document S/2011/642.

[102] S/2011/638.

[103] S/2011/788.

Ms. Omayra Bermúdez-Lugo, United States of America (diamonds), who had resigned from the Group.

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 2011.[104]

(vi) *The Sudan*

By resolution 1982 (2011) of 17 May 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, extended until 19 February 2012 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), 1891 (2009) and 1945 (2010), to assist in monitoring the implementation of measures adopted against the Sudan.

In a letter dated 19 January 2011 from the Secretary-General addressed to the President of the Security Council,[105] the Secretary General informed the Council of the appointment of the following experts to the Panel of Experts: Mr. Michael Lewis from the United Kingdom of Great Britain and Northern Ireland (aviation); Mr. Hesham Nasr from Egypt (international humanitarian law); and Mr. Rajiva Sinha from India (finance). In a letter dated 7 February 2011 from the Secretary-General addressed to the President of the Security Council,[106] the Secretary General informed the Council of the appointment of Mr. Jérôme Tubiana from France (regional) to the Panel of Experts.

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 2011 and submitted, on 10 January 2012, a report on its work in 2011 to the Security Council.[107]

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[104] Annual report of the Security Council Committee established pursuant to resolutions 1572 (2004) concerning Côte d'Ivoire, annex to Letter dated 29 December 2011 from the Chair of the Security Council Committee pursuant to resolution 1572 (2004) concerning Côte d'Ivoire addressed to the President of the Security Council (S/2011/808), and midterm report of the Group of Experts enclosed in Letter dated 17 October 2011 from the Chair of the Security Council Committee established pursuant to resolution 1572 (2004) concerning Côte d'Ivoire (S/2011/642).

[105] Letter dated 19 January 2011 from the Secretary-General addressed to the President of the Security Council (S/2011/27).

[106] Letter dated 7 February 2011 from the Secretary-General addressed to the President of the Security Council (S/2011/60).

[107] Report of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan, annex to Letter dated 4 January 2012 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/2012/18).

(vii) *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, continued in existence in 2011. As of 26 January 2007, no individuals had been registered by the Committee.

(viii) *Democratic People's Republic of Korea*

By resolution 1985 (2011) of 10 June 2011, the Security Council decided to extend until 12 June 2012 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 2011, 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 the same resolution, as modified by resolution 1874 (2009), continued its operations in 2011. The Committee submitted its report of its activities in 2010 and 2011 to the Security Council.[108]

(ix) *Islamic Republic of Iran*

By resolution 1984 (2011) of 9 June 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, extended the mandate of the Panel of Experts set up by resolution 1929 (2010) to 9 June 2012. In a letter dated 6 January 2011 from the Secretary-General addressed to the President of the Security Council,[109] the Secretary-General informed the Security Council that Mr. Christof Wegner (Germany) was not able to join the panel, and was replaced by Mr. Thomas F. H. Mazet (Germany). The eight members of the Panel were reappointed on 30 June 2011.[110]

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

[108] Report of the Security Council Committee established pursuant to resolution 1718 (2006), annex to Letter dated 18 February 2011 from the Chairman of the Security Council Committee established pursuant to resolution 1718 (2006) addressed to the President of the Security Council (S/2011/84), and Annual report of the Security Council Committee established pursuant to resolution 1718 (2006), annex to Letter dated 9 January from the Chairman of the Security Council Committee established pursuant to resolution 1718 (2006) addressed to the President of the Security Council (S/2012/17).

[109] S/2011/4.

[110] See Letter dated 30 June 2011 from the Secretary-General addressed to the President of the Security Council (S/2011/405).

resolutions 1747 (2007), 1803 (2008) and 1929 (2010), continued its operations in 2011 and submitted a report to the Security Council.[111]

(x) *Libya*

In resolution 1970 (2011) dated 26 February 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, that all Member States were to immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to the Libyan Arab Jamahiriya, from or through their territories or by their nationals, or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel whether or not originating in their territories, and decided further that this measure would not apply to: (a) supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, as approved in advance by the Committee established pursuant to paragraph 24; (b) protective clothing, including flak jackets and military helmets, temporarily exported to the Libyan Arab Jamahiriya by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only; or (c) other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee. The Council further decided that the Libyan Arab Jamahiriya would cease the export of all arms and related materiel and that all Member States would prohibit the procurement of such items from the Libyan Arab Jamahiriya by their nationals, or using their flagged vessels or aircraft, and whether or not originating in the territory of the Libyan Arab Jamahiriya.

In the same resolution, the Council further decided to implement a travel ban for individuals listed in Annex I to the resolution. Exemptions on grounds of, *inter alia*, humanitarian need, judicial process, and furthering peace and stability were included.

The Council decided, *inter alia*, that all Member States would freeze without delay all funds, other financial assets and economic resources which were on their territories, which were owned or controlled, directly or indirectly, by the individuals or entities listed in annex II of this resolution or designated by the Committee established pursuant to paragraph 24, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, and decided further that all Member States could ensure that any funds, financial assets or economic resources were prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the individuals or entities listed in Annex II of the resolution or individuals designated by the Committee. Those measures did not apply to funds, other financial assets or economic resources that had been determined by relevant Member States to be, *inter alia*, necessary for basic expenses, including payment for foodstuffs, rent or mortgage,

[111] Oral reports of the Chairman of the Security Council Committee established pursuant to resolution 1737 (2006) for the period 10 December to 22 March 2011 (S/PV.6502), 22 March to 23 June 2011 (S/PV.6563), 24 June to 1 September 2011 (S/PV.6607) and 1 September to 18 December 2011 (S/PV.6697).

medicines and medical treatment, taxes, insurance premiums, and public utility charges or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services in accordance with national laws, or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

The Council also established a new Sanctions Committee to, *inter alia*, monitor the implementation of resolution 1970 (2011).

In resolution 1973 (2011) dated 17 March 2011, the Security Council requested the Secretary-General to create for an initial period of one year, in consultation with the new Sanctions Committee for Libya, a group of up to eight experts ("Panel of Experts"), under the direction of the Committee to assist, *inter alia*, the Committee in carrying out its mandate as specified in paragraph 24 of resolution 1970 (2011) and this resolution.

In a letter dated 10 May 2011 from the Secretary-General to the President of the Security Council,[112] the Secretary-General appointed the following members of the Panel: Mr. Youseif Fahed Ahmed Alserhan, Jordan (maritime); Mr. Oumar Dièye Sidi, Niger (customs); Ms. Giovanna Perri, Italy (finance); Mr. Salim Raad, Lebanon (arms: heavy weapons); Ms. Savannah de Tessières, France (arms: small arms and light weapons); Mr. Ahmed Zerhouni, Algeria (aviation). Mr. Raad was designated as the coordinator. Mr. Theodore Murphy, United States of America (humanitarian and regional) was subsequently appointed,[113] as was Mr. Simon Dilloway, United Kingdom of Great Britain and Northern Ireland (finance).[114]

In resolution 2009 (2011) of 16 September 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41, decided, *inter alia*, that the measures imposed by paragraph 9 of resolution 1970 (2011) would also not apply to the supply, sale or transfer to Libya of arms and related materiel of all types, including technical assistance, training, financial and other assistance, intended solely for security or disarmament assistance to the Libyan authorities and notified to the Committee in advance and in the absence of a negative decision by the Committee within five working days of such a notification; nor small arms, light weapons and related materiel, temporarily exported to Libya for the sole use of United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, notified to the Committee in advance and in the absence of a negative decision by the Committee within five working days of such a notification. The asset freeze and other measures imposed in paragraphs 17, 19, 20 and 21 of resolution 1970 (2011) and paragraph 19 of resolution 1973 (2011) were also adjusted.

(xi) *Afghanistan*

By resolution 1988 (2011) of 17 June 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided that all States would take the following measures with respect to individuals and entities designated prior to this date as the

[112] S/2011/293.

[113] S/2011/313.

[114] S/2011/377.

Taliban, and other individuals, groups, undertakings and entities associated with them, as specified in section A ("Individuals associated with the Taliban") and section B ("Entities and other groups and undertaking associated with the Taliban") of the Consolidated List of the Committee established pursuant to resolution 1267 (1999) and 1333 (2000) as of the date of adoption of the resolution, as well as other individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan as designated by the Committee established in paragraph 30 of resolution 1988 (2011): freeze without delay the funds and other financial assets or economic resources of designated individuals and entities; prevent the entry into or transit through their territories by designated individuals; and prevent the direct or indirect supply, sale and transfer from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types, spare parts, and technical advice, assistance, or training related to military activities, to designated individuals and entities. The Council also decided that that all Member States could make use of the provisions set out in paragraphs 1 and 2 of resolution 1452 (2002), as amended by resolution 1735 (2006) regarding available exemptions with regard to these measures, and encouraged their use by Member States.

The Council reaffirmed that acts or activities indicating that an individual, group undertaking or entity was associated with Al-Qaida included: (a) participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of; (b) supplying, selling or transferring arms and related materiel to; or (c) recruiting for; or (d) otherwise supporting acts or activities of Al-Qaida or any cell, affiliate, splinter group or derivative thereof. The Council also decided, *inter alia*, in order to assist the Committee in fulfilling its mandate, that the 1267 Monitoring Team, established pursuant to paragraph 7 of resolution 1526 (2004), would also support the Committee for a period of 18 months.

(*g*) 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 was 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). By resolution 1989 (2011) of 17 June 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, that all States would take the measures as previously imposed by paragraph 8(c) of resolution 1333 (2000), and paragraphs 1 and 2 of resolution 1390 (2002), with respect to Al-Qaida and other individuals, groups, undertakings and entities associated with them, including those referred to in section C ("Individuals associated with Al-Qaida") and section D ("Entities and other groups and undertakings associated with Al-Qaida") of the Consolidated List established pursuant to resolutions 1267 (1999) and 1333 (2000), as well as those designated after the date of adoption of the resolution, which would from the adoption of this resolution onwards be known as the "Al-Qaida Sanctions List". The Council noted that, pursuant to resolution 1988

(2011), the Taliban, and other individuals, groups, undertakings and entities associated with them, as previously included in section A ("Individuals associated with the Taliban) and section B ("Entities and other groups and undertaking associated with the Taliban") of the Consolidated List established pursuant to resolutions 1267 (1999) and 1333 (2000) would not be governed by the resolution and decided that henceforth the Al-Qaida Sanctions List would include only the names of those individuals, groups, undertakings and entities associated with Al-Qaida.

In the same resolution, the Council extended the mandate of the ombudsman appointed by the Secretary-General, in line with Security Council resolution 1904 (2009) of 17 December 2009. The Council decided, *inter alia*, in order to assist the Committee in fulfilling its mandate, as well as to support the Ombudsperson, to extend the mandate of the current New York-based Monitoring Team and its members, established pursuant to paragraph 7 of resolution 1526 (2004), for a further period of 18 months.

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 through 2011, and gave oral reports to the Security Council for the period of December to June 2011.[115]

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 would 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. By resolution 1977 (2011) of 20 April 2011, the Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of the 1540 Committee for a period of 10 years until 25 April 2021.

The Chair of the Committee submitted the report on the compliance with the requirements of resolution 1540 (2004).[116]

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[115] Oral reports of the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) for the periods 15 November 2010 to 16 May 2011(S/PV.6536), 16 May to 14 November 2011 (S/PV.6658).

[116] See Report of the Committee established pursuant to Security Council resolution 1540 (2004), submitted by Letter dated 12 September 2011 from the Chair of the Security Council Committee established pursuant to resolution 1540 (2004) addressed to the President of the Security Council (S/2011/579).

(*h*) Humanitarian law and human rights in the context of peace and security

(i) *Children and armed conflict*

In resolution 1998 (2011) of 12 July 2011, the Security Council noted that it had considered the 2011 report of the Secretary-General [117] and stressed that the resolution did not seek to make any legal determination as to whether situations which were referred to in the Secretary-General's report were or were not armed conflicts within the context of the Geneva Conventions[118] and the Additional Protocols[119] thereto, nor did it prejudge the legal status of the non-State parties involved in those situations. The Council requested, *inter alia*, the Secretary-General to submit a report by June 2012 on the implementation of its resolutions and presidential statements on children and armed conflict, including the present resolution.

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 met 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 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. The MRM sought to monitor the following six grave abuses: killing or maiming of children; recruiting or using child soldiers; attacks against schools or hospitals; rape and other grave sexual violence against children; abduction of children; and denial of humanitarian access for children.

In 2011, the Working Group published five conclusions, on Somalia,[120] the Democratic Republic of the Congo,[121] Afghanistan,[122] Chad,[123] and the Central African Repub-

[117] A/65/820-S/2011/250.

[118] United Nations, *Treaty Series*, vol. 75, pp. 31, 85, 135 and 287.

[119] *Ibid*., vol. 1125, pp. 3 and 609.

[120] Security Council Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in Somalia, document S/AC.51/2011/2.

[121] Security Council Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in the Democratic Republic of the Congo, document S/AC.51/2011/1.

[122] Security Council Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in Afghanistan, document S/AC.51/2011/3.

[123] Security Council Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in Chad, document S/AC.51/2011/4.

lic, respectively.[124] The Working Group presented its annual report to the President of the Security Council.[125]

(ii) *The rule of law and transitional justice in conflict and post-conflict societies*

The Secretary-General submitted his report to the Security Council,[126] as requested by the Security Council,[127] to take stock of progress made in implementing the recommendations contained in the 2004 report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies,[128] and to consider in this context further steps to promote the rule of law. The report recommended, *inter alia*, that the Security Council should strengthen its support for the International Court of Justice by, *inter alia*, requesting advisory opinions and recommending that parties refer matters to international adjudication, where appropriate; when designing mandates, the Security Council was encouraged to consider making explicit references to the need for transitional justice measures, where relevant, bearing in mind the specific concerns of women and children; and recommended that the Security Council should continue to foster accountability for gross violations of human rights and serious violations of international humanitarian law, including by supporting the implementation of recommendations of international commissions of inquiry.

(iii) *Women and peace and security*[129]

On 28 October 2011, the President of the Security Council issued a statement in connection with consideration of the item "Women and peace and security".[130] The Security Council, *inter alia*, urged all parties to fully comply with their obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, 1979,[131] and the Optional Protocol thereto, 1999,[132] and strongly encouraged states that had not ratified or acceded to the convention and optional protocol thereto to consider doing so. The Security Council reiterated its strong condemnation of all violations of applicable international law committed against women and girls in armed conflict and post-conflict situations and urged the complete cessation by all parties of such acts with immediate effect. The Security Council also urged Member States to bring to justice those responsible for crimes of this nature.

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[124] Security Council Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in the Central African Republic, document S/AC.51/2011/5.

[125] 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 2010 to 30 June 2011), document S/2011/610.

[126] S/2011/634.

[127] S/PRST/2010/11.

[128] S/2004/616.

[129] For more information on the legal activities of the United Nations as it relates to women, see section 6 of the present chapter.

[130] S/PRST/2011/20.

[131] United Nations, *Treaty Series*, vol. 1249, p.13.

[132] *Ibid*., vol. 2131, p.83.

(*i*) HIV and AIDS

In resolution 1983 (2011) of 7 June 2011, the Security Council recognized, *inter alia*, that the spread of HIV could have a uniquely devastating impact on all sectors and levels of society, and that in conflict and post-conflict situations, those impacts could be felt more profoundly. The Council encouraged the incorporation, as appropriate, of HIV prevention, treatment, care, and support, including voluntary and confidential counselling and testing programmes in the implementation of mandated tasks of peacekeeping operations, including assistance to national institutions, to security sector reform (SSR) and to disarmament, demobilization and reintegration (DDR) processes; and the need to ensure the continuation of such prevention, treatment, care and support during and after transitions to other configurations of UN presence.

3. Disarmament and related matters

(*a*) Disarmament machinery

(i) *Disarmament Commission*

The United Nations Disarmament Commission, a subsidiary organ of the General Assembly with a general mandate on disarmament questions, is the only body composed of all Member States of the United Nations for in-depth deliberation on relevant disarmament issues.

The Commission held its organizational session for 2011 in New York on 28 March 2011 and 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 Commission then met in New York from 4 to 21 April 2011 and held eight plenary meetings.

At its meeting on 4 April 2011, the Commission decided to establish Working Group III on the item "Practical confidence-building measures in the field of conventional weapons" which then held seven meetings, from 15 to 20 April 2011. On 4 and 5 April, the Commission held a general exchange of views on all agenda items.[133] Working Group I held seven meetings, from 7 to 14 April 2011, to discuss "Recommendations for achieving the objective of nuclear disarmament and non-proliferation of nuclear weapons". Working Group II held seven meetings, on 6 April and from 8 to 14 April 2011, to address agenda item 5, entitled "Elements of a draft declaration of the 2010s as the fourth disarmament decade".

The Secretary-General transmitted to the Commission the annual report of the Conference on Disarmament,[134] together with all the official records of the sixty-fifth session of the General Assembly relating to disarmament matters.

On 21 April 2011, the Commission adopted, by consensus, the reports of its subsidiary bodies and the conclusions contained therein. There were no recommendations put

[133] See A/CN.10/PV.310–313.

[134] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 27* (A/66/27).

forward by the Commission. At the same meeting, the Commission adopted, as a whole, its report to be submitted to the sixty-sixth session of the General Assembly.[135]

(ii) *Conference on Disarmament*[136]

The Conference on Disarmament met from 24 January to 1 April, 16 May to 1 July and from 2 August to 16 September 2011, during which it held forty-five formal plenary meetings. On 25 January 2011, the Conference adopted the agenda for the 2011 session,[137] which included, *inter alia*, the items "Cessation of the nuclear arms race and nuclear disarmament", "Prevention of nuclear war, including all related matters", "Prevention of an arms race in outer space", "Effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons", "New types of weapons of mass destruction and new systems of such weapons; radiological weapons", "Comprehensive programme of disarmament" and "Transparency in armaments". On 29 March 2011, the Conference agreed upon a schedule of informal meetings of the Conference on its agenda items[138] but no consensus was reached on a programme of work for the 2011 session. On 15 September 2011, the Conference adopted its annual report and transmitted it to the General Assembly for its consideration.[139]

(iii) *General Assembly*

On 2 December 2011, the General Assembly adopted, on the recommendation of the First Committee, five resolutions concerning the institutional make-up of the United Nations' efforts in the field of disarmament,[140] two of which are highlighted below.

By resolution 66/60, entitled "Report of the Disarmament Commission," the General Assembly reaffirmed, without a vote, *inter alia*, the mandate of the Disarmament Commission as the specialized, deliberative body within the United Nations multilateral disarmament machinery that allowed for in-depth deliberations on specific disarmament issues, leading to the submission of concrete recommendations on those issues, and requested the Disarmament Commission to continue its work in accordance with its mandate.

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[135] Report of the Disarmament Commission for 2011, *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 42* (A/66/42).

[136] 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.

[137] CD/1902.

[138] CD/1907.

[139] Report of the Conference on Disarmament 2011 session, *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 27* (A/66/27).

[140] General Assembly resolution 66/20, entitled "Objective information on military matters, including transparency of military expenditures"; resolution 66/21, entitled "Prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons: report of the Conference on Disarmament"; resolution 66/59, entitled "Report of the Conference on Disarmament"; resolution 66/60, entitled "Report of the Disarmament Commission"; resolution 66/66, entitled "Revitalizing the work of the Conference on Disarmament and taking forward multilateral disarmament negotiations".

By resolution 66/66, entitled "Revitalizing the work of the Conference on Disarmament and taking forward multilateral disarmament negotiations," the General Assembly reiterated, without a vote, its grave concern about the current status of the disarmament machinery, including the lack of substantive progress in the Conference on Disarmament for more than a decade, and stressed the need for greater efforts and flexibility to advance multilateral disarmament negotiations. The General Assembly called upon States to intensify efforts aimed at creating an environment conducive to multilateral disarmament negotiations.

(iv) *Security Council*[141]

On 20 April 2011, the Security Council adopted resolution 1977 (2011). Acting under Chapter VII of the Charter of the United Nations, the Security Council reiterated its decisions in and the requirements of resolution 1540 (2004), and re-emphasized the importance for all States to implement fully that resolution which focused on obligations and commitments in relation to arms control, disarmament and non-proliferation in all its aspects of all weapons of mass destruction and their means of delivery. The Security Council decided, *inter alia*, to extend the mandate of the 1540 Committee for a period of 10 years until 25 April 2021; additionally, the Security Council decided that the 1540 Committee shall continue to intensify its efforts to promote the full implementation by all States of resolution 1540 (2004), focused on issues encompassing (a) accountability, (b) physical protection, (c) border controls and law enforcement efforts and (d) national export and trans-shipment controls including controls on providing funds and services such as financing to such exports and trans-shipments.

The Security Council adopted resolution 1984 (2011) on 9 June 2011. Acting under article 41 of Chapter VII of the Charter of the United Nations, the Security Council decided to extend until 9 June 2012 the mandate of the Panel of Experts that were helping to monitor sanctions imposed on the Islamic Republic of Iran, as specified in paragraph 29 of resolution 1929 (2010), and requested the Secretary-General to take the necessary administrative measures to this effect. The Council noted the importance of credible, fact-based, independent assessments, analysis, and recommendations, in accordance with the Panel of Experts' mandate.

[141] For further details on Security Council resolutions, see section 2 of the present chapter.

(*b*) Nuclear disarmament and non-proliferation issues

The 5th Review Meeting of the Contracting Parties, pursuant to article 20, of the Convention on Nuclear Safety, 1994[142] was held at the Headquarters of the International Atomic Energy Agency (IAEA) in Vienna, from 4 to 14 April 2011.[143] Sixty-one of seventy-two Contracting Parties participated in the 5th Review Meeting, the first major international nuclear safety meeting following the events at the Fukushima Daiichi Nuclear Power Plant in Japan caused by the earthquake and tsunami of 11 March, 2011.

The President of the 5th Review Meeting requested that the following topics be discussed at the Review Meeting in order to stimulate discussion on the Fukushima Daiichi accident: nuclear power plant design against external events; offsite response to emergency situations (e.g. station blackout); emergency management and preparedness following worst case accident scenarios; safety consideration for operation of multi-units at the same nuclear power plant site; cooling of spent fuel storage in severe accident scenarios; training of nuclear power plant operators for severe accident scenarios; radiological monitoring following nuclear power plant accident involving radiological release; public protection emergency actions; and communications in emergency situations. Those topics and several others concerning accident mitigation were discussed and the Contracting Parties adopted a statement in response to the Fukushima Daiichi accident. The statement, *inter alia*, reaffirmed the objectives of the Convention on Nuclear Safety, 1984, included a commitment to identify and act on the lessons of the accident, supported the IAEA's continuing role in the area of nuclear safety, and included a commitment to hold an Extraordinary Meeting in 2012 on the Fukushima Daiichi accident.

The IAEA held its 55th General Conference of Member States from 19 to 23 September 2011 in Vienna. At the Conference, the Member States adopted sixteen resolutions and four decisions[144] backing the IAEA's work in key areas, including resolutions on measures to strengthen the Agency's activities related to nuclear science, technology and applications; international cooperation in nuclear, radiation, transport and waste safety, nuclear security; and the application of IAEA safeguards in the Middle East.

The Seventh Conference on Facilitating the Entry into force of the Comprehensive Nuclear Test Ban Treaty was held in New York on 23 September 2011. The Conference addressed the need for the Annex 2 States to ratify the Convention to permit the Treaty to enter into force.

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[142] United Nations, *Treaty Series*, vol. 1963, p. 293.

[143] For more information, see annex IV to the Summary Report of the 5th Review Meeting of the Contracting Parties pursuant to Article 20 of the Convention on Nuclear Safety, 4 to 14 April 2011, available on the website of IAEA at http://iaea.org/ (accessed on 31 December 2011).

[144] General Conference resolutions GC (55)/RES/1–16 and decisions GC (55)/DEC/9–12.

General Assembly

On 2 December 2011, the General Assembly adopted, upon the recommendation of the First Committee, 15 resolutions and one decision concerning nuclear weapons and non-proliferation issues,[145] three of which are described below.

In resolution 66/26, entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons," adopted by a recorded vote of 120 in favour and 57 against, the General Assembly reaffirmed the urgent need to reach an early agreement on effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons, and recommended, *inter alia*, that further intensive efforts be devoted to the search for such a common approach or common formula and that the various alternative approaches, including, in particular, those considered in the Conference on Disarmament, be further explored in order to overcome these difficulties.

In resolution 66/40, entitled "Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments," adopted by a recorded vote of 169 in favour, 6 abstentions and 6 against, the General Assembly recalled, *inter alia*, the commitment by the nuclear-weapon States to undertake further efforts to reduce and ultimately eliminate all types of nuclear weapons, deployed and non-deployed, including through unilateral, bilateral, regional and multilateral measures; underlined the recognition by the 2010 Review Conference of the legitimate interests of non-nuclear-weapon States in nuclear-weapon States constraining their development and qualitative improvement of nuclear weapons and ending their development of advanced new types of nuclear weapons; and called upon the nuclear-weapon States to take steps in this regard. The Assembly also reiterated that each article of the Treaty on the Non-Proliferation of Nuclear Weapons[146] was binding on the States parties at all times and in all circumstances and that all States parties should be held fully accountable with respect to strict compliance with their obligations under the Treaty, and called upon all States to comply fully with all decisions, resolutions and other commitments made at Review Conferences.

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[145] General Assembly resolutions 66/7, entitled "Report of the International Atomic Energy Agency"; resolution 66/23, entitled "African Nuclear-Weapon-Free Zone Treaty"; resolution 66/25, entitled "Establishment of a nuclear-weapon-free zone in the region of the Middle East"; resolution 66/26, entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons"; resolution 66/28, entitled "Follow-up to nuclear disarmament obligations agreed to at the 1995, 2000 and 2010 Review Conferences of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons"; resolution 66/33, entitled "2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons and its Preparatory Committee"; resolution 66/40, entitled "Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments"; resolution 66/44, entitled "Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices"; resolution 66/45, entitled "United action towards the total elimination of nuclear weapons"; resolution 66/46, entitled "Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons"; resolution 66/48, entitled "Reducing nuclear danger"; resolution 66/51, entitled "Nuclear disarmament"; resolution 66/57, entitled "Convention on the Prohibition of the Use of Nuclear Weapons"; resolution 66/61, entitled "The risk of nuclear proliferation in the Middle East"; resolution 66/64, entitled "Comprehensive Nuclear-Test-Ban Treaty" and decision 66/518 entitled "Missiles".

[146] United Nations, *Treaty Series*, vol. 729, p. 161.

The General Assembly adopted, resolution 66/61, entitled "The risk of nuclear proliferation in the Middle East" by a recorded vote of 167 in favour, six against and five abstentions, in which it reaffirmed the importance of Israel's accession to the Treaty on the Non-Proliferation of Nuclear Weapons and placement of all its nuclear facilities under comprehensive IAEA safeguards, in realizing the goal of universal adherence to the Treaty in the Middle East, and called upon that State to accede to the Treaty without further delay, not to develop, produce, test or otherwise acquire nuclear weapons, to renounce possession of nuclear weapons and to place all its unsafeguarded nuclear facilities under full-scope Agency safeguards as an important confidence-building measure among all States of the region and as a step towards enhancing peace and security.

(*c*) Biological and chemical weapons issues

The Seventh 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[147] (Biological Weapons Convention), was held in Geneva from 5 to 22 December 2011. The Review Conference examined, *inter alia*, the history and operation of confidence-building measures;[148] compliance by States parties with their obligations under the Convention;[149] and new scientific and technological developments relevant to the Convention.[150]

The sixteenth 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[151] (Chemical Weapons Convention) was held in The Hague, from 28 November to 2 December 2011. It was attended by representatives of 131 States Parties to the Convention, two signatory States (Israel and Myanmar), 29 NGOs and chemical industry associations, and several international organisations. The issues considered included, *inter alia*, the final extension of the deadline for destruction of declared chemical weapons; and the full, effective and non-discriminatory implementation of Article XI of the Convention. The Conference considered and adopted the report of its sixteenth session.[152]

General Assembly

On 2 December 2011, the General Assembly adopted, two resolutions relating to biological and chemical weapons, upon the recommendation of the First Committee, which are described below.

By resolution 66/35, entitled "Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction," the General Assembly emphasized that the universality of the Chemical

[147] *Ibid*., vol. 1015, p. 163.

[148] BWC/CONF.VII/INF.1.

[149] BWC/CONF.VII/INF.2.

[150] BWC/CONF.VII/INF.3.

[151] United Nations, *Treaty Series*, vol. 1974, p. 45.

[152] C-16/5.

Weapons 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.

The General Assembly also adopted resolution 66/65 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

In 2009, the General Assembly decided to convene a United Nations Conference on the Arms Trade Treaty in 2012 "to elaborate a legally-binding instrument on the highest possible common international standards for the transfer of conventional arms".[153] The General Assembly also decided that the remaining four sessions of what had been the Open-ended Working Group should be considered as sessions of the Preparatory Committee (PrepCom) for this Conference. The purpose of the PrepCom was to make recommendations on the elements for an effective and balanced legally-binding instrument on the highest possible common international standards for the transfer of conventional arms. If concluded, the Arms Trade Treaty (ATT) would be the first legally-binding instrument in the field of conventional disarmament to be negotiated within the framework of the United Nations and its adoption would contribute to preventing irresponsible transfers of conventional arms and thus to enhancing international peace, security and stability.

The second session of the PrepCom on an ATT was convened at United Nations Headquarters in New York from 28 February to 4 March 2011. The main issues discussed related to major themes, such as preamble/principles; goals and objectives; scope (type of equipment and types of transfer of arms); criteria and parameters for the transfer of arms; and international cooperation and assistance mechanisms that may form the basis of the ATT to be concluded in 2012. The third PrepCom session on an ATT was held in New York from 11 to 15 July 2011; it continued the movement towards 2012.

By decision 66/518 of 2 December 2011, the General Assembly decided to hold, within existing resources, the final session of the PrepCom for the ATT from 13 to 17 February 2012 in New York, to conclude the substantive work of the PrepCom and to decide on all relevant procedural matters, pursuant to paragraph 8 of resolution 64/48.

In 2011, regional meetings on the ATT were held in Montevideo, Casablanca, New York, Bali and Kathmandu.

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[153] General Assembly resolution 64/48 of 2 December 2009.

From 13 to 16 September 2011, the Second Meeting of States parties to the Convention on Cluster Munitions, 2010[154] took place in Beirut. The meeting was attended by 131 State parties and observers, including 41 non-signatories. The participants discussed, *inter alia*, the clearance and destruction of cluster munitions remnants and risk reduction activities; storage and stockpile reduction; victim assistance; technical cooperation and assistance; transparency measures; and the universalization of the treaty. The Meeting adopted the Beirut Declaration, in which the Meeting encouraged, *inter alia*, all states to accede to the Convention.[155]

The Governmental Group of Experts (GGE) for 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[156] (Convention on Conventional Weapons), met for three sessions, 21 to 25 February, from 28 March to 1 April and from 22 to 26 August 2011. The GGE focused on preparation for the 2011 Fourth Review Conference of the High Contracting parties to the Convention, and on the Draft Protocol on Cluster Munitions.[157] The Fourth Review Conference of the High Contracting Parties to the Convention was held in Geneva on 14 to 25 November 2011.[158] 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 High Contracting Parties were unable to come to a consensus on a Draft Protocol on Cluster Munitions, and the proposal was not adopted.

The Eleventh 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[159] (Mine-Ban Convention) was held in Phnom Penh, Cambodia, from 28 November to 2 December 2011. The Meeting discussed the Cambodia Congress Report on achieving the aims of the Cartagena action plan,[160] examined measures to ensure compliance and evaluated the Implementation Support Unit.[161] The Meeting also discussed its deep concern about new use of anti-personnel mines by States not parties and armed non-State actors since the Tenth Meeting.[162]

The Protocol on Explosive Remnants of War ["ERW"] (Protocol V) held its 2011 Meeting of Experts from 6 to 8 April 2011 in Geneva. The main focus in 2011 of the Meeting of Experts were on the following issues, *inter alia*, clearance, removal or destruction

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[154] The text of the Convention can be found at http://www.clusterconvention.org/files/2011/01/Convention-ENG1.pdf. See too the United Nations Treaty collection website at http://treaties.un.org.

[155] CCM/MSP/2011/WP.1/Rev.2. See also CCM/MSP/2011/5.

[156] United Nations, *Treaty Series,* vol. 1342, p. 137.

[157] For the procedural reports of the GGE, see CCW/GGE/2011-I/4, CCW/GGE/2011-II/4 and CCW/GGE/2011-III/1. See also, the Advance Version of the Procedural Report (CCW GGE Third 2011 Session), http://www.unog.ch (accessed on 31 December 2011).

[158] CCW/MSP/2010/5.

[159] United Nations, *Treaty Series*, vol. 2056, p. 211.

[160] APLC/MSP.11/2011/WP.6.

[161] APLC/MSP.11/2011/WP.8.

[162] APLC/MSP.11/2011/WP.6.

of ERW; victim assistance; cooperation and assistance and requests for assistance; and generic preventive measures. The Fifth Conference of the High Contracting Parties of the Protocol was held in Geneva from 9 to 10 November 2011. The Conference focused on, *inter alia*, universalization of the Protocol; the clearance, removal or destruction of ERW; and victim assistance.[163]

General Assembly

On 2 December 2011, the General Assembly adopted, on the recommendation of the First Committee, eight resolutions dealing with conventional arms issues,[164] of which two are highlighted below.

In resolution 66/47, entitled "The illicit trade in small arms and light weapons in all its aspects," adopted without a vote, 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,[165] endorsed the report adopted at the Open-ended Meeting of Governmental Experts on the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,[166] and took note with appreciation of the Chair's summary of discussions, prepared under his own responsibility, reflecting his interpretation of the main points under discussion. It further confirmed its decision to convene a preparatory committee for the review conference of the implementation of the Programme of Action from 27 August to 7 September 2012 in New York.

The General Assembly adopted resolution 66/29, with 162 in favour and 18 abstentions, entitled "Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction". The Assembly invited all States that had not acceded to the Convention, 1997,[167] to do so without delay. The Assembly renewed its call upon all States and other relevant parties to work together to promote, support and advance the care, rehabilitation and social and econom-

[163] CCW/P.V/CONF/2011/12 and Corr.1.

[164] General Assembly resolutions 66/29, entitled "Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction"; resolution 66/34, entitled "Assistance to States for curbing the illicit traffic in small arms and light weapons and collecting them"; resolution 66/37, entitled "Conventional arms control at the regional and subregional levels"; resolution 66/39, entitled "Transparency in armaments"; resolution 66/41, entitled "National legislation on transfer of arms, military equipment and dual-use goods and technology"; resolution 66/42, entitled "Problems arising from the accumulation of conventional ammunition stockpiles in surplus"; resolution 66/47, entitled "The illicit trade in small arms and light weapons in all its aspects"; resolution 66/49, entitled "Compliance with non-proliferation, arms limitation and disarmament agreements and commitments"; resolution 66/62, 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".

[165] 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).

[166] A/CONF.192/MGE/2011/1.

[167] United Nations, *Treaty Series*, vol. 2056, p. 211.

ic reintegration of mine victims, mine risk education programmes and the removal and destruction of anti-personnel mines placed or stockpiled throughout the world.

(*e*) Regional disarmament activities of the United Nations

(i) *Africa*

In 2011, 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: regulating small arms brokering in East Africa; developing a regional legal instrument to curb the proliferation of small arms and light weapons in Central Africa; the harmonization of legislation on small arms; and the African Security Sector Reform Programme.

From 4 to 6 October 2011, UNREC participated in the formulation and the adoption phases of a Togo National Action Plan to implement Security Council resolutions 1325 (2000) and 1820 (2008) jointly with several UN agencies in Togo. The meeting of Member States Experts of the African Union was held in Lomé from 26 to 29 September 2011, to consider and adopt the Draft African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, and to elaborate an African common position on an Arms Trade Treaty.

The United Nations Standing Advisory Committee on Security Questions in Central Africa (UNSAC) held its thirty-second Ministerial Meeting in Sao Tomé on 16 March 2011.[168] The Ministerial Meeting adopted the "Sao Tomé Declaration on a Central African Common Position on the Arms Trade Treaty".[169] 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, 2010 (Kinshasa Convention)[170] was the guiding framework for the new Declaration which addressed the scope, criteria and parameters, as well as implementation aspects, of a future Arms Trade Treaty.[171]

a. General Assembly

On 2 December 2011, the General Assembly adopted resolution 66/58 entitled "United Nations Regional Centre for Peace and Disarmament in Africa", upon the recommendation of the First Committee. The Assembly recalled the call by the Secretary-General for continued financial and in kind support from Member States,[172] which would enable the Regional Centre to discharge its mandate in full and to respond more effectively to requests

[168] For more information, see report of the thirty-second Ministerial Meeting of the Committee (A/66/72-S/2011/225).

[169] A/66/72—S/2011/225, annex I.

[170] The text of the Convention can be found at http://treaties.un.org/pages/ParticipationStatus.aspx (accessed on 31 December 2011).

[171] See Report of the Secretary-General: Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa, document A/66/163.

[172] See A/66/159.

for assistance from African States. It welcomed the contribution of the Regional Centre to continental disarmament, peace and security, in particular its assistance to the African Union Commission in the elaboration of the African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons and the ongoing process of seeking an African common position on the proposed arms trade treaty, and to the African Commission on Nuclear Energy in its implementation of the African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba),[173] and further noted with appreciation the tangible achievements and impact of the Regional Centre at the regional level, including its assistance to Central African States in their elaboration of the Kinshasa Convention, to Central and West African States in the elaboration of their respective common positions on the proposed arms trade treaty, to West Africa on security sector reform initiatives, and to East Africa on programmes to control brokering of small arms and light weapons. It also decided to include in the provisional agenda of its sixty-seventh session the sub-item "United Nations Regional Centre for Peace and Disarmament in Africa".

(ii) *Latin America and the Caribbean*

In 2011, 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 focused 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 deal 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 focused 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".[174]

(iii) *Asia and the Pacific*

In 2011, the United Nations Regional Centre for Peace, Disarmament and Development in Asia and the Pacific (UNRCPD) continued to promote disarmament and security dialogue and cooperation in the Asian and Pacific region.[175] The Centre held a Regional Workshop for East and Southeast Asia on Strengthening the Capacity of the Media in Advocating and Promoting Peace and Disarmament in Asia and the Pacific in Beijing, China, from 20 to 21 January 2011; held the fourth to eighth meetings of the Nepal Working Group on Small Arms and other portable lethal Weapons; and coordinated several workshops and other seminars across the continent.

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[173] See A/50/426, annex.

[174] 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/66/140).

[175] 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/66/113).

The Centre organized the Twenty-third United Nations Conference on Disarmament Issues from 27 to 29 July 2011, which was hosted by the Government of Japan in Matsumoto. The conference called for the implementation of the 2010 Treaty on the Nonproliferation of Nuclear Weapons Review Conference Action Plan; suggested nuclear disarmament measures and ways forward after the New START; expressed their concern about the stalemate at the Conference on Disarmament; and assessed the prospects for the negotiation on a Fissile-Material Cut-Off Treaty. [176]

(iv) *General Assembly*

On 2 December 2011, the General Assembly adopted, on the recommendation of the First Committee, ten resolutions dealing with regional disarmament,[177] two of which are highlighted below.

In resolution 66/38, entitled "Confidence-building measures in the regional and subregional context", adopted without a vote, 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[178] and called upon Member States to pursue those ways and means through sustained consultations and dialogue, while at the same time avoiding actions that may hinder or impair such a dialogue.

In resolution 66/43, entitled "Treaty on the South-East Asia Nuclear-Weapon-Free Zone (Bangkok Treaty)", adopted without a vote, the General Assembly welcomed the commitment and efforts of the Commission for the Treaty on the South-East Asia Nuclear-Weapon-Free Zone, 1997, to further enhance and strengthen the implementation of the Bangkok Treaty[179] by implementing the Plan of Action for the period 2007–2012. The General Assembly encouraged nuclear-weapon States and States parties to the Treaty on the South-East Asia Nuclear-Weapon-Free Zone to work constructively with a view to ensuring the early accession of the nuclear weapon States to the Protocol to the Treaty.[180]

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[176] For more information, see http://www.unrcpd.org.np/activities/conferences/conferences.php?cid=54 (accessed on 31 December 2011).

[177] General Assembly resolution 66/22, entitled "Implementation of the Declaration of the Indian Ocean as a Zone of Peace"; resolution 66/36, entitled "Regional disarmament"; resolution 66/38, entitled "Confidence-building measures in the regional and subregional context"; resolution 66/43, entitled "Treaty on the South-East Asia Nuclear-Weapon-Free Zone (Bangkok Treaty)"; resolution 66/53, entitled "United Nations regional centres for peace and disarmament"; resolution 66/54, entitled "United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean"; resolution 66/55, entitled "Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa"; resolution 66/56, entitled "United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific"; resolution 66/63, entitled "Strengthening of security and cooperation in the Mediterranean region".

[178] *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 42* (A/48/42), annex II.

[179] United Nations, *Treaty Series*, vol. 1981, p. 129.

[180] *Status of Multilateral Arms Regulation and Disarmament Agreements* (United Nations publication, Sales No. E.97.IX.3), p. 268–270.

(*f*) Other issues

(i) *Terrorism and disarmament*

a. General Assembly

On 2 December 2011, the General Assembly adopted resolution 66/50 entitled "Measures to prevent terrorists from acquiring weapons of mass destruction" without a vote, upon the recommendation of the First Committee. The Assembly called upon all Member States to support international efforts to prevent terrorists from acquiring weapons of mass destruction and their means of delivery. 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[181] 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[182]

In resolution 1977 (2011) of 20 April 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, remained gravely concerned by the threat of terrorism and the risk that non-state actors may acquire, develop, traffic in or use nuclear, chemical, and biological weapons and their means of delivery. The Council decided to extend the mandate of the 1540 Committee for a period of 10 years until 25 April 2021.

(ii) *Outer space*

During its 2011 session, the Conference on Disarmament held a general debate during the plenary meetings on the issue of the prevention of an arms race in outer space, as well as an informal meeting on this issue, on 31 March 2011.

a. General Assembly

On 2 December 2011, the General Assembly adopted resolution 66/27, entitled "Prevention of an arms race in outer space", on the recommendation of the First Committee, in which the Assembly reaffirmed, by a vote of 176 in favour and 2 against, *inter alia*, the importance and urgency of preventing an arms race in outer space and the readiness of all States to contribute to that common objective, in conformity with the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.[183] The Assembly additionally reaffirmed its recognition, as stated in the report of the Ad Hoc Committee on the Prevention of an Arms Race in Outer Space, 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

[181] United Nations, *Treaty Series*, vol. 2445, p. 89.

[182] See section 2 of the present chapter.

[183] United Nations, *Treaty Series*, vol. 610, p. 205.

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.[184]

On 9 December 2011, the General Assembly adopted resolution 66/71, entitled "International cooperation in the peaceful uses of outer space", on the recommendation of the Fourth Committee, in which the Assembly urged, *inter alia*, 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.

(iii) *Relationship between disarmament and development*

On 2 December 2011, the General Assembly adopted resolution 66/30 entitled "Relationship between disarmament and development" without a vote, on the recommendation of the First Committee. 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,[185] as well as the adoption on 11 September 1987 of the Final Document of the International Conference on the Relationship between Disarmament and Development.[186] The General Assembly also recalled the report of the Group of Governmental Experts on the relationship between disarmament and development[187] and its reappraisal of this significant issue in the current international context.

(iv) *Multilateralism and disarmament*

On 2 December 2011, the General Assembly adopted resolution 66/32 entitled "Promotion of multilateralism in the area of disarmament and non-proliferation" on the recommendation of the First Committee, by a vote of 125 in favour, 5 against and 48 abstentations. In the resolution, the Assembly reaffirmed, *inter alia*, that multilateralism was 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) *The environment and disarmament*

On 2 December 2011, the General Assembly adopted two resolutions in the area of the environment and disarmament, without a vote, on the recommendation of the First Committee.

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[184] See *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 27* (A/45/27), para. 118 (para. 63 of the quoted text).

[185] See resolution S-10/2.

[186] See Report of the International Conference on the Relationship between Disarmament and Development (A/CONF.130/39).

[187] A/59/119.

In resolution 66/31, entitled "Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control", 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.

In resolution 66/52, entitled "Prohibition of the dumping of radioactive wastes", the Assembly called upon all States to take appropriate measures with a view to preventing any dumping of nuclear or radioactive wastes that would infringe upon the sovereignty of States. The Assembly also requested the Conference on Disarmament to take into account, in the negotiations for a convention on the prohibition of radiological weapons, radioactive wastes as part of the scope of such a convention.

(vi) *Information security and disarmament*

By resolution 66/24 of 2 December 2011, entitled "Developments in the field of information and telecommunications in the context of international security", adopted without a vote, on the recommendation of the First Committee, the General Assembly 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.

4. Legal aspects of peaceful uses of outer space

The Legal Subcommittee on the Peaceful Uses of Outer Space held its fiftieth session at the United Nations Office at Vienna from 28 March to 8 April 2011.[188]

Under the agenda item "Status and application of the five United Nations treaties on outer space", the Subcommittee reconvened its Working Group on the Status and Application of the Five United Nations Treaties on Outer Space[189] and provided a revised status of

[188] For the Report of the Legal Subcommittee, see A/AC.105/990.

[189] See Report of the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space, A/AC.105/990, annex I.

the five United Nations treaties on outer space.[190] The Legal Subcommittee endorsed the recommendation that the mandate of the Working Group be extended for one additional year. It was agreed that the Subcommittee, at its fifty-first session, in 2012, would review the need to extend the mandate of the Working Group beyond that period.

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,[191] which was endorsed by the Subcommittee.

Under the agenda item entitled "Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space",[192] the Subcommittee, *inter alia*, noted with satisfaction that the adoption of the Safety Framework for Nuclear Power Source Applications in Outer Space[193] by the Scientific and Technical Subcommittee at its forty-sixth session and the endorsement of the Safety Framework by the Committee on the Peaceful Uses of Outer Space at its fifty-second session, in 2009, constituted an important step in the efforts of progressive development of international space law and significantly advanced international cooperation in ensuring the safe use of nuclear power sources in outer space.

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",[194] the Subcommittee, *inter alia*, noted with satisfaction the progress in the preparation of a draft protocol on space assets achieved by the International Institute for the Unification of Private Law (UNIDROIT) committee of governmental experts, which had held its fifth session from 21 to 25 February 2011, in Rome. The Subcommittee noted that the UNIDROIT committee had agreed on a new definition of the term "space asset", a new public service rule and a rule specifying the criteria for the identification of space assets for registration purposes. The UNIDROIT committee had also agreed on alternatives with regard to a default remedy in relation to components for which consensus had not been reached. The Subcommittee also noted that the UNIDROIT committee had recommended to the UNIDROIT Governing Council that it authorize the transmission of the preliminary draft protocol, as amended, for adoption by a diplomatic conference, and that the Council would consider that matter at its ninetieth session, which was held in Rome from 9 to 11 May 2011.

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[190] 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.

[191] See Report of the Chair of the Working Group on the Definition and Delimitation of Outer Space, A/AC.105/990, annex II.

[192] General Assembly resolution 47/68 of 14 December 1992.

[193] A/AC.105/934.

[194] United Nations, *Treaty Series*, vol. 2307, p. 285.

Under the agenda item entitled "Capacity-building in space law", the Subcommittee, *inter alia*, agreed that capacity-building, training and education in space law were of paramount importance to national, regional and international efforts to further develop the practical aspects of space science and technology and to increase knowledge of the legal framework within which space activities were carried out. It was emphasized that the Subcommittee had an important role to play in that regard.

With regard to the agenda item entitled "General exchange of information on national mechanisms relating to space debris mitigation measures", the Subcommittee, *inter alia*, expressed concern over the increasing amount of space debris and noted that the future of space activities largely depended on space debris mitigation. The Subcommittee also noted with satisfaction that the endorsement by the General Assembly, in its resolution 62/217 of 22 December 2007, of the Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space was a key step in providing all space-faring nations with guidance on how to mitigate the problem of space debris.

Concerning the item entitled "General exchange of information on national legislation relevant to the peaceful exploration and use of outer space", the Subcommittee, *inter alia*, reconvened the Working Group on National Legislation Relevant to the Peaceful Exploration and Use of Outer Space.[195] The Subcommittee noted with appreciation that the Office for Outer Space Affairs continued to update the database on national space legislation and multilateral and bilateral agreements related to the peaceful exploration and use of outer space.[196] In that regard, the Subcommittee encouraged States to continue to submit to the Office, for inclusion in the database, the texts of laws and regulations, bilateral and multilateral agreements and policy and other legal documents related to space activities.

The Committee on the Peaceful Uses of Outer Space held its fifty-fourth session in Vienna from 1 to 10 June 2011. The Committee took note of the Legal Subcommittee's report.[197]

General Assembly

On 2 December 2011, the General Assembly adopted, on the recommendation of the First Committee, resolution 66/27 entitled "Prevention of an arms race in outer space", by a recorded vote of 176 in favour and 2 against. 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 2012 session, and

[195] See Report of the Working Group on National Legislation Relevant to the Peaceful Exploration and Use of Outer Space, A/AC.105/990, annex III.

[196] See website of the Office for Outer Space Affairs at http://unoosa.org.

[197] For the report of the Committee on the Peaceful Uses of Outer Space, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 20* (A/66/20).

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 9 December 2011, the Assembly adopted, on the recommendation of the Fourth Committee, resolution 66/71 entitled "International cooperation in the peaceful uses of outer space", without a vote. 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 to make Azerbaijan 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 Association of Remote Sensing Centres in the Arab World.

5. Human rights[198]

(*a*) Sessions of the United Nations human rights bodies and treaty bodies

(i) *Human Rights Council*

The Human Rights Council, established in 2006,[199] 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.

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[198] 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.

[199] General Assembly resolution 60/251 of 15 March 2006. For further details on its establishment, see the *United Nations Juridical Yearbook,* 2006, chapter III, section 5.

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.[200] The Council also assumed the thirty-eight country and thematic special procedures existing under its predecessor, the Commission on Human Rights, while reviewing the mandate and criteria for the establishment of these special procedures.[201] Moreover, based on the previous "1503 procedure", the 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.[202]

In 2011, the Human Rights Council held its sixteenth, seventeenth and eighteenth regular sessions[203] and four special sessions on the "Situation of human rights in the Libyan Arab Jamahiriya",[204] the "Situation of human rights in the Syrian Arab Republic",[205] the "Situation of human rights in the Syrian Arab Republic",[206] and "The human rights situation in the Syrian Arab Republic".[207]

(ii) *Human Rights Advisory Committee*

The Human Rights Council Advisory Committee was established pursuant to Human Rights Council resolution 5/1 of 18 June 2007.[208] 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

[200] 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 (accessed on 31 December 2011).

[201] Human Rights Council decision 1/102 of 30 June 2006.

[202] More detailed information on the mandate, work and methods of the Human Rights Council is available online at http://www.ohchr.org/english/bodies/hrcouncil (accessed on 31 December 2011).

[203] For the reports of the sixteenth and seventeenth sessions, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 53* (A/66/53). For the report of the eighteenth session, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 53A* (A/66/53/Add.1).

[204] Fifteenth special session of the Human Rights Council held in Geneva on 25 February 2011. For the report of the fifteenth special session, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 53* (A/66/53).

[205] Sixteenth special session of the Human Rights Council held in Geneva on 29 April 2011. For the report of the sixteenth special session, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 53* (A/66/53).

[206] Seventeenth special session of the Human Rights Council held in Geneva on 22 and 23 August 2011. For the report of the seventeenth special session, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 53* (A/66/53).

[207] Eighteenth special session of the Human Rights Council held in Geneva on 2 December 2011. For the report of the eighteenth special session, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 53A* (A/66/53/Add.2).

[208] The Human Rights Council Advisory Committee replaced the Sub-Commission for the Promotion and Protection of Human Rights as the main subsidiary body of the Human Rights Council.

out by the Council. The Advisory Committee held its sixth session from 17 to 21 January 2011[209] and its seventh session from 8 to 12 August 2011 in Geneva.[210]

(iii) *Human Rights Committee*

The Human Rights Committee was established under the International Covenant on Civil and Political Rights of 1966[211] to monitor the implementation of the Covenant and its Optional Protocols[212] in the territory of States parties. The Committee held its hundred-and-first session in New York from 14 March to 1 April 2011, and its hundred-and-second and hundred-and-third sessions in Geneva from 11 to 29 July 2011 and from 17 October to 4 November 2011, respectively.[213] The Human Rights Committee adopted general comment No. 34 at its hundred-and-second session, on freedom of opinion and expression (Article 19), replacing general comment No. 10.[214]

(iv) *Committee on Economic, Social and Cultural Rights*

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council[215] to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights of 1966[216] by its State parties. The Committee held its forty-sixth and forty-seventh sessions in Geneva from 2 to 20 May and from 14 November to 2 December 2011, respectively.[217]

(v) *Committee on the Elimination of Racial Discrimination*

The Committee on the Elimination of Racial Discrimination was established under the International Convention on the Elimination of All Forms of Racial Discrimination of 1966[218] to monitor the implementation of this Convention by its States parties. The Committee held its seventy-eighth and seventy-ninth sessions in Geneva from 14 February to

[209] For the Report of the Advisory Committee on its sixth session, see A/HRC/AC/6/3.

[210] For the Report of the Advisory Committee on its seventh session, see A/HRC/AC/7/4.

[211] United Nations, *Treaty Series*, vol. 999, p. 171.

[212] Optional Protocol to the International Covenant on Civil and Political Rights, *ibid*; and Second Optional Protocol to the International Covenant on Civil and Political Rights, *ibid.,* vol. 1642, p. 414. .

[213] For the reports of the hundred-and-first and hundred-and-second sessions, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 40* (A/66/40), vol. II. At the time of publication, the report of the hundred-and-third session was forthcoming.

[214] The full text of the General Comment is available at the homepage of the Office of the United Nations High Commissioner for Human Rights (http://www2.0hchr.org/english/bodies/hrc/comments.htm, accessed on 31 December 2011) (CCPR/C/GC/34).

[215] Economic and Social Council resolution 1985/17 of 28 May 1985.

[216] United Nations, *Treaty Series*, vol. 993, p. 3.

[217] Report of the Committee on Economic, Social and Cultural Rights on its forty-sixth and forty-seventh sessions (E/2012/22).

[218] United Nations, *Treaty Series*, vol. 660, p. 195.

11 March and from 8 August to 2 September 2011, respectively.[219] The Committee adopted General Recommendation No. 34 at its seventy-ninth session on racial discrimination against people of African descent,[220] setting out the special measures needed to address such discrimination.

(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[221] to monitor the implementation of this Convention by its States parties. The Committee held its forty-eighth session in Geneva from 17 January to 4 February 2011, its forty-ninth session in New York from 11 to 29 July 2011, and its fiftieth session in Geneva from 3 to 21 October 2011.[222]

(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[223] to monitor the implementation of the Convention by its States parties. In 2011, the Committee held its forty-sixth and forty-seventh sessions from 9 May to 3 June and from 31 October to 25 November, respectively, in Geneva.[224] 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,[225] held its thirteenth, fourteenth and fifteenth sessions from 21 to 25 February, from 20 to 24 June and from 14 to 18 November 2011, respectively.

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[219] The respective reports can be found in *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 18* (A/66/18).

[220] The full text of the General Comment is available at the homepage of the Office of the United Nations High Commissioner for Human Rights (http://www.ohchr.org, accessed on 31 December 2011). (CERD/C/GC/34).

[221] United Nations, *Treaty Series*, vol. 1249, p. 13.

[222] The report of the forty-eighth session can be found in *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 38* (A/66/38). The reports of the forty-ninth and fiftieth sessions can be found in *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 38* (A/67/38).

[223] United Nations, *Treaty Series*, vol. 1465, p. 85.

[224] The report of the forty-sixth session can be found in *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 44* (A/66/44). The report of the forty-seventh session can be found in *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 44* (A/67/44).

[225] United Nations, *Treaty Series,* vol. 2375, p. 237. For further information on the mandate of the Subcommittee, see *United Nations Juridical Yearbook 2006*, (United Nations publication, Sales No. E.09.V.1), chapter III, section 6.

(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, 1989[226] to monitor the implementation of this Convention by its States parties. The Committee held its fifty-sixth, fifty-seventh and fifty-eighth sessions in Geneva, from 17 January to 4 February, from 30 May to 17 June, and from 19 September to 7 October 2011, respectively.[227] The Committee adopted general comment No. 13 on the right of the child to freedom from all forms of violence,[228] focusing on article 19 prohibiting physical and mental violence and abuse towards children.

(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[229] to monitor the implementation of this Convention by its States parties in their territories. In 2011, the Committee held its fourteenth and fifteenth sessions in Geneva from 4 to 8 April and from 12 to 23 September, respectively.[230]

(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, 2006[231] and its 2006 Optional Protocol[232] 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.

The Committee held its fifth session from 11 to 15 April 2011, and its sixth session from 19 to 23 September 2011.[233]

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[226] United Nations, *Treaty Series*, vol. 1577, p. 3.

[227] The report of the fifty-sixth, fifty-seventh and fifty-eighth sessions can be found in *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 41* (A/66/41).

[228] The full text of the general comment is available at the homepage of the Office of the United Nations High Commissioner for Human Rights (http://www2.0hchr.org/english/bodies/crc/comments.htm, accessed on 31 December 2011) (CRC/C/GC/13).

[229] United Nations, *Treaty Series*, vol. 2220, p. 3.

[230] The report of the fourteenth session can be found in *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 48* (A/66/48). The report of the fifteenth session can be found in *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 48* (A/67/48).

[231] United Nations, *Treaty Series*, vol. 2515, p. 3.

[232] *Ibid.*, vol. 2518, p. 283.

[233] For the report of the fifth session, see CRPD/C/5/5. The report of the sixth session was forthcoming at the time of publication.

(xi) *Committee on Enforced Disappearances*

The Committee on Enforced Disappearances was established under the International Convention for the Protection of All Persons from Enforced Disappearance, 2006[234] to monitor the implementation of the Convention by its State parties. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Convention. The Committee examines each report and shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State party concerned.

In accordance with article 31, a State party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State party of provisions of this Convention. The Committee meets in Geneva and would normally hold two sessions per year.

The Committee held its first session in Geneva from 8 to 11 November 2011.[235]

(*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 2011. The first report was submitted on 24 May 2011[236] and focused on a comprehensive approach based on stronger legal, political and institutional measures to combat racism and racial discrimination against Roma, and discrimination based on work and descent. The second report was submitted by the Special Rapporteur on 21 July 2011[237] pursuant to General Assembly resolution 65/199 of 21 December 2010 entitled "Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance", in which the Special Rapporteur was requested to report on the persistence and resurgence of neo-Nazism, neo-Fascism and violent nationalist ideologies based on racial and national prejudice, and in particular on the countering of extremist political parties, movements and groups. Mr. Mutuma Ruteere replaced Mr Muigai as the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and racial intolerance in November 2011.

On 25 March 2011, the Human Rights Council adopted resolution 16/27, entitled "The right to food", without a vote, in which the Council, *inter alia*, stressed the need to guarantee fair and non-discriminatory access to land rights for smallholders, traditional farmers and their organizations, including, in particular, rural women and vulnerable groups. The Council also stressed the need to mainstream a gender perspective into the

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[234] General Assembly resolution 61/177 of 20 December 2006, annex.

[235] The report of the first session was forthcoming at the time of publication.

[236] A/HRC/17/40.

[237] A/HRC/18/44.

mandate of the Special Rapporteur on the right to food, and reaffirmed the need to ensure that programmes delivering safe and nutritious food are inclusive and accessible to persons with disabilities.

On 29 September 2011, the Council adopted resolution 18/15, entitled "The incompatibility between democracy and racism", without a vote, in which the Council, *inter alia*, acknowledged this incompatibility as expressed in the Durban Declaration and Programme of Action,[238] and of the outcome document of the Durban Review Conference,[239] and emphasized the obligations of States under international law, as applicable, to exercise due diligence to prevent crimes against migrants perpetrated with racist or xenophobic motivations, to investigate such crimes and to punish the perpetrators, and that not doing so violates—and impairs or nullifies the enjoyment of—the human rights and fundamental freedoms of victims.

On 30 September 2011, the Council adopted resolution 18/27, entitled "From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance", by a recorded vote of 35 in favour, 10 abstentions and 1 against. In the resolution, the Council, *inter alia*, took note of the report of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action,[240] and decided that the Working Group should convene its tenth session from 8 to 19 October 2012. The Council also took note of the report of the Working Group of Experts on People of African Descent.[241]

(ii) *General Assembly*

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Githu Muigai, submitted two reports to the General Assembly. In the first, which was submitted on 19 August 2011,[242] the Special Rapporteur addressed the implementation of General Assembly resolution 65/199 of 21 December 2010 entitled "Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance". The Special Rapporteur noted, *inter alia*, that States should fully comply with article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966,[243] and therefore prohibit in law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

In his second report to the General Assembly of the same day,[244] submitted pursuant to General Assembly resolution 65/240 of 24 December 2010, entitled "Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance

[238] *Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, 31 August—8 September 2001* (A/CONF.189/12 and Corr.1), chap. I, paras. 81 and 85.

[239] *Report of the Durban Review Conference, Geneva, 20—24 April 2009,* (A/CONF.211/8), chap. I, paras. 10 and 11.

[240] A/HRC/16/64.

[241] A/HRC/18/45.

[242] A/66/312.

[243] United Nations, *Treaty Series*, vol. 660, p. 195.

[244] A/66/313.

and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action," the Special Rapporteur focused on a number of thematic issues, including: structural discrimination; incitement to national, racial or religious hatred; extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements; and victims of racism, racial discrimination, xenophobia and related intolerance, including people of African descent, Roma and the victims of discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status. The Special Rapporteur further recommended the design and implementation of affirmative action measures or programmes, in line with general recommendation No. 32 of the Committee on the Elimination of Racial Discrimination entitled "The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination".[245]

The Secretary-General submitted a report pursuant to General Assembly resolution 65/240 of 24 December 2010, 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".[246] The report summarizes information and contributions received from various actors and Member States. The Secretary-General concludes that urgent measures are needed to reverse worrisome trends of increasingly hostile racist and xenophobic attitudes and violence and encourages Member States that have not yet done so to develop and implement national action plans in order to combat racial discrimination and related intolerance.

On 22 September 2011, the General Assembly adopted resolution 66/3, entitled "United against racism, racial discrimination, xenophobia and related intolerance", without a vote. The General Assembly commemorated the tenth anniversary of the adoption of the Durban Declaration and Programme of Action,[247] and reaffirmed that racism, racial discrimination, xenophobia and related intolerance constitute a negation of the purposes and principles of the Charter of the United Nations and of the Universal Declaration of Human Rights[248] and that equality and non-discrimination are fundamental principles of international law. The resolution also recalled the importance of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966, and the Committee on the Elimination of Racial Discrimination, as well as of universal ratification and effective implementation of that Convention.

On 19 December 2011, the General Assembly adopted resolution 66/143, entitled "Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance", on the recommendation of the Third Committee, by a vote of 134 in favour, 24 against and 32 abstentions. The Assembly noted with concern, *inter alia*, the increase in the number of racist incidents in several countries and the rise of skinhead groups, and reaffirmed that such acts may be qualified to fall within the scope of activities covered by article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966, and that they may

[245] CERD/C/GC/32.

[246] A/66/328.

[247] *Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, 31 August—8 September 2001* (A/CONF.189/12 and Corr.1), chap. I.

[248] General Assembly resolution 217 A (III) of 10 December 1948.

represent a clear and manifest abuse of the rights to freedom of peaceful assembly and of association as well as the rights to freedom of opinion and expression within the meaning of those rights as guaranteed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, 1966[249] and the International Convention on the Elimination of All Forms of Racial Discrimination, 1966.

On the same day, the General Assembly adopted resolution 66/144, 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", on the recommendation of the Third Committee, by a recorded vote of 138 in favour, 6 against and 46 abstentions. The Assembly reaffirmed, *inter alia*, that universal adherence to and full implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966, is of paramount importance for the fight against racism, racial discrimination, xenophobia and related intolerance, and for the promotion of equality and non-discrimination in the world.

(*c*) Right to development and poverty reduction

(i) *Human Rights Council*

The Independent Expert on the question of human rights and extreme poverty, Ms. Magdalena Sepúlveda Carmona, submitted her report to the Human Rights Council.[250] The report set out a human rights-based approach to recovery from the global economic and financial crises, with a particular focus on the most vulnerable and marginalized groups. The recommendations the Independent Expert outlined included, *inter alia,* the creation of legal entitlements or social protection guarantees; an indication that the obligations of non-discrimination and equality oblige States to ensure that employment creation policies benefit all sectors of society equally, with all forms of discrimination to be prohibited; and, that regulations which protect individuals from abuse by private actors should be enhanced.

On 17 June 2011, the Human Rights Council adopted resolution 17/13, entitled "Extreme poverty and human rights", without a vote. The resolution reaffirmed the commitments made at relevant United Nations conferences and summits, including those made at the World Summit for Social Development, held in Copenhagen in 1995, and at the Millennium Summit, at which Heads of State and Government committed themselves to eradicate extreme poverty and to halve, by 2015, the proportion of the world's people whose income is less than one dollar a day. The resolution requested that the Office of the United Nations High Commissioner for Human Rights give high priority to extreme poverty and human rights, integrating and cooperating fully with the Special Rapporteur in the various activities, notably through consultation on the draft guiding principles on extreme poverty and human rights.

On the same day, the Human Rights Council adopted resolution 17/23, entitled "The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights," by a recorded vote of 32 in favour, two against, with

[249] United Nations, *Treaty Series*, vol. 999, p. 171.

[250] A/HRC/17/34.

12 abstentions. The Council noted the entry into force of the United Nations Convention against Corruption, 2003[251] as well as the United Nations Convention against Transnational Organized Crime, 2000[252] and recognized the urgent need to repatriate such illicit funds to the countries of origin.

On 30 September 2011, the Human Rights Council adopted resolution 18/26 entitled "The right to development", by a recorded vote of 45 in favour, with 1 abstention. 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 should take various forms, including guidelines and standards on the implementation of the right to development, and evolve into a basis for consideration of an international legal standard of a binding nature through a collaborative process of engagement.

The United Nations High Commissioner for Human Rights submitted a report pursuant to Human Rights Council decision 16/177 entitled "Summary of the panel discussion of the Human Rights Council on the theme: 'The way forward in the realization of the right to development: between policy and practice'".[253]

The Human Rights Council submitted a report on the Social Forum held in Geneva from 3 to 5 October 2011, in accordance with Human Rights Council resolution 16/26.[254] The report contains a summary of the discussions held at the Social Forum and recommendations in relation to the promotion and effective realization of the right to development, including the role and contribution of civil society and international assistance and cooperation. In its conclusions, the Human Rights Council found that normative frameworks were already in place in relation to many of the elements of the right to development, however existing human rights mechanisms and provisions needed to be utilized and the right to development had to be invoked more routinely by employing strategic litigation and legal advocacy.

(ii) *General Assembly*

The Secretary-General submitted the report of the Special Rapporteur on extreme poverty and human rights,[255] Ms. Magdalena Sepúlveda Carmona, in accordance with Human Rights Council resolution 17/13 of 17 June 2011. The report analyzed several laws, regulations and practices that punish, segregate, control and undermine the autonomy of persons living in poverty, and recommended, *inter alia*, that States shall take all necessary measures to eliminate all direct and indirect discrimination against persons living in poverty; comprehensive anti-discrimination legislation in relation to persons living in poverty must be adopted; and, States must ensure that all criminal and regulatory policies comply with human rights standards, including the principles of equality and non-discrimination and the presumption of innocence.

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[251] United Nations, *Treaty Series*, vol. 2349, p. 41.

[252] *Ibid.*, vol. 2225, p 209.

[253] A/HRC/19/39.

[254] A/HRC/19/70.

[255] A/66/265.

On 2 December 2011, the General Assembly adopted resolution 66/30, entitled "Relationship between disarmament and development", on the recommendation of the First Committee, without a vote. 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,[256] as well as the adoption on 11 September 1987 of the Final Document of the International Conference on the Relationship between Disarmament and Development.[257] The General Assembly also recalled the report of the Group of Governmental Experts on the relationship between disarmament and development[258] and its reappraisal of this significant issue in the current international context.

The Secretary-General and the United Nations High Commissioner for Human Rights submitted a joint report entitled "The right to development",[259] summarizing the activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) with regard to the promotion and realization of the right to development, including in commemoration of the twenty-fifth anniversary of the United Nations Declaration on the Right to Development in 2011.

On 19 December 2011, the General Assembly adopted resolution 66/125, entitled "Implementation of the outcome of the World Summit for Social Development and of the twenty-fourth special session of the General Assembly", on the recommendation of the Third Committee, without a vote. The Assembly welcomed, *inter alia*, the reaffirmation by Governments of their will and commitment to continue implementing the Copenhagen Declaration on Social Development and the Programme of Action, in particular to eradicate poverty, promote full and productive employment and foster social integration to achieve stable, safe and just societies for all.

On the same day, the General Assembly adopted resolution 66/155, entitled "The right to development", on the recommendation of the Third Committee, by a recorded vote of 154 in favour, 6 against and 29 abstentions,. The Assembly stressed that the primary responsibility for the promotion and protection of all human rights lies with the State, and reaffirmed that States have the primary responsibility for their own economic and social development and that the role of national policies and development strategies cannot be overemphasized, and reaffirmed the primary responsibility of States to create national and international conditions favourable to the realization of the right to development, as well as their commitment to cooperate with each other to that end.

The Secretary-General transmitted to the General Assembly the report prepared by the United Nations Educational, Scientific and Cultural Organization (UNESCO) pursuant to General Assembly resolution 65/166,[260] entitled "Culture and Development". The report stated that although there was no explicit reference to culture in the Millennium Development Goals, culture bears direct and indirect effects on their attainment. The

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[256] See resolution S-10/2.

[257] See *Report of the International Conference on the Relationship between Disarmament and Development, New York, 24 August 2011—September 1987* (A/CONF.130/39).

[258] A/59/119.

[259] A/HRC/19/45.

[260] A/66/150.

report outlined the work undertaken by 18 United Nations entities, demonstrating the contributions of culture to development.

On 22 December 2011, the General Assembly adopted resolution 66/208 entitled "Culture and development", on the recommendation of the Second Committee, without a vote. The Assembly recognized, *inter alia,* that culture is an essential component of human development and invites Member States to raise public awareness of the importance of cultural diversity for sustainable development and to ensure a more visible and effective integration and mainstreaming of culture into social, environmental and economic development policies and strategies at all levels.

(*d*) Right of peoples to self-determination

(i) *Universal realization of the right of peoples to self-determination*

General Assembly

On 9 December 2011, the General Assembly adopted resolution 66/91, entitled "Implementation of the declaration on the granting of Independence to Colonial Countries and Peoples", on the recommendation of the Fourth Committee, by a recorded vote of 168 in favour, three against and one abstention. The General Assembly reaffirmed its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all its subsequent resolutions concerning the implementation of the Declaration, and its resolution 65/119 of 10 December 2010, by which it declared the period 2011–2020 the Third International Decade for the Eradication of Colonialism. The General Assembly reaffirmed its determination to continue to take all steps necessary to bring about the complete and speedy eradication of colonialism and the faithful observance by all States of the relevant provisions of the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Universal Declaration of Human Rights.[261] The General Assembly requested that the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples formulate specific proposals to bring about an end to colonialism and to report thereon to the General Assembly at its sixty-seventh session.

On 19 December 2011, the General Assembly adopted resolution 66/145, entitled "Universal realization of the right of peoples to self-determination", on the recommendation of the Third Committee, without a vote. The Assembly reaffirmed that the 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; and requested the Human Rights Council to continue to give special attention to violations of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation.

[261] General Assembly Resolution 217 A (III) of 10 December 1948.

(ii) *Mercenaries*

a. Human Rights Council

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination submitted its report to the Human Rights Council.[262] The report discussed new forms of mercenary activities that have emerged in recent years and demonstrated that mercenarism continues to pose a threat to human rights and the right of peoples to self-determination. It also discussed the need for an international regulatory framework for private military and security companies. In particular, it analyzed the relationship between the draft convention elaborated by the Working Group, the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict,[263] which clarifies the responsibilities of States with regard to private military and security companies and lists good practices, and the International Code of Conduct for Private Security Service Providers for those companies. Furthermore, the Working Group discussed the need for the adoption of national legislation regulating private military and security companies and the difficulties encountered to date in ensuring accountability for human rights violations and violations of national laws by private military and security companies.

On 29 September 2011, the Human Rights Council adopted resolution 18/4, entitled "The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", by a recorded vote of 31 in favour, 11 against and 4 abstentions. 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[264] to consider taking the necessary action to do so. The Council also called upon the international community and all States, in accordance with

[262] A/HRC/18/32.

[263] A/63/467—S/2008/636.

[264] United Nations, *Treaty Series*, vol. 2163, p. 75.

their obligations under international law, to cooperate with and assist the judicial prosecution of those accused of mercenary activities in transparent, open and fair trials.

b. General Assembly

The Secretary-General transmitted the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination to the General Assembly.[265] The Working Group recommended, *inter alia*, 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 Working Group appealed to Member States that are not yet parties to consider acceding promptly and as a matter of urgency to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989 and encouraged all member States to study carefully the proposed text of a possible draft convention as well as the essential elements for a possible international framework to regulate and monitor the activities of private military and security companies and to continue to participate actively and constructively in the work of the Working Group, with a view to establishing in the shortest possible time a suitable binding framework through which to regulate and monitor the activities of private military and security companies.

On 19 December 2011, the General Assembly adopted resolution 66/147, entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", on the recommendation of the Third Committee, by a vote of 130 in favour, 53 against and 6 abstentions. The Assembly reaffirmed, *inter alia*, that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. The Assembly called upon, *inter alia*, all States that have not yet done so to consider taking the action necessary to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989.

(*e*) Economic, social and cultural rights

(i) *Right to food*

a. Human Rights Council

The Special Rapporteur on the right to food, Mr. Olivier De Schutter, submitted his report to the Human Rights Council.[266] The report explored how States could achieve a reorientation of their agricultural systems towards modes of production that were highly productive, highly sustainable and that contributed to the progressive realization of the human right to adequate food. The Special Rapporteur recommended that, as part of their obligation to devote the maximum of their available resources to the progressive realiza-

[265] A/66/317.

[266] A/HRC/16/49.

tion of the right to food, States should implement public policies supporting the adoption of agroecological practices.

The Human Rights Advisory Council submitted its final study entitled "Discrimination in the context of the right to food".[267] The Advisory Committee considered that all efforts of States and intergovernmental organizations to reduce hunger and malnutrition, including through economic development and trade, should have at their base a human rights approach and be guided by a right to food framework. Such an approach would assure that both *de jure* and *de facto* discrimination in the context of the right to food are effectively addressed.

On 25 March 2011, the Human Rights Council adopted resolution 16/27, entitled "The right to food", without a vote, in which the Council, *inter alia*, recalled the Universal Declaration of Human Rights,[268] 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[269] and the United Nations Millennium Declaration,[270] and the provisions of the International Covenant on Economic, Social and Cultural Rights, 1966[271] in which the fundamental right of every person to be free from 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. 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 submitted his interim report to the General Assembly.[272] The report explored access to markets for small-scale farmers in developing countries, and the issues raised by the expansion in contract farming. The Special

[267] A/HRC/16/40.

[268] General Assembly resolution 217 (III) A of 10 December 1948.

[269] 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.

[270] General Assembly resolution 55/2 of 8 September 2000.

[271] United Nations, *Treaty Series*, vol. 993, p. 3.

[272] A/66/262.

Rapporteur suggested, *inter alia*, that it was vital to ensure a diversity of outlets for the produce of small-scale farmers to strengthen their position in the food chain, which contributed to the realization of the right to food in rural communities and rural development in general, and that Governments had a duty to support the realization of the right to food, to the maximum extent of their available resources, by providing small-scale farmers with appropriate support.

On 19 December 2011, the General Assembly adopted resolution 66/158, entitled "The right to food", on the recommendation of the Third Committee, without a vote. The Assembly urged States, *inter alia*, that had not yet done so to favourably consider becoming parties to the Convention on Biological Diversity, 1992[273] and to consider becoming parties to the International Treaty on Plant Genetic Resources for Food and Agriculture[274] as a matter of priority. The Assembly stressed, *inter alia*, that States parties to the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights[275] should consider implementing that agreement in a manner that is supportive of food security, while mindful of the obligation of Member States to promote and protect the right to food.

(ii) *Right to education*

a. Human Rights Council

The Special Rapporteur on the right to education, Dr. Kishore Singh, submitted his annual report to the Human Rights Council,[276] which focused on the promotion of equality of opportunity in education. The Special Rapporteur emphasized, *inter alia*, that the promotion of equality in education requires not only the elimination of discriminatory practices, but also the adoption of temporary special measures to bring about equality in fact with regard to education, and recommended that States should ensure adequate legal protection to the right to education and its equal enjoyment in all its inclusive dimensions.

On 16 June 2011, the Human Rights Council adopted resolution 17/3 entitled "The right to education: follow-up to Human Rights Council resolution 8/4", without a vote, 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,[277] the International Covenant on Economic, Social and Cultural Rights, 1966,[278] the Convention on the Rights of the Child, 1989,[279] the Convention on the Elimination of All Forms of Discrimination against Women, 1979,[280] the Convention on the Rights of Persons with Disabilities, 2006[281] and other relevant international instruments. The Council also urged States to give full

[273] United Nations, *Treaty Series*, vol. 1760, p. 79.

[274] *Ibid.,* vol. 2400, p. 303.

[275] See *Legal Instruments Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh on 15 April 1994* (GATT secretariat publication, Sales No. GATT/1994–7).

[276] A/HRC/17/29.

[277] General Assembly resolution 217 (III) A of 10 December 1948.

[278] United Nations, *Treaty Series*, vol. 993, p. 3.

[279] *Ibid.*, vol. 1577, p. 3.

[280] *Ibid.*, vol. 1249, p. 13.

[281] *Ibid.*, vol. 2515, p. 3.

effect to right to education by, *inter alia*, promoting equality of opportunity in education in accordance with their human rights obligations, including by ensuring adequate legal protection of the right to education and its equal enjoyment.

b. General Assembly

The Secretary-General transmitted to the General Assembly the interim report of the Special Rapporteur on the right to education.[282] The report focused on the issue of domestic financing of basic education, and detailed human rights obligations for financing education and provided practical examples of national legal frameworks that ensure domestic financing. The report additionally focused on education in emergencies.

(iii) *Right to adequate standard of living, including adequate housing and to be free of adverse effects of toxic waste*

a. Human Rights Council

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms. Raquel Rolnik, submitted her report to the Human Rights Council.[283] The report underlined the importance of integrating human rights standards, and particularly the right to adequate housing, in post-disaster and post conflict reconstruction processes. The Special Rapporteur recommended, *inter alia*, that the right of all people displaced as a result of conflict or disaster (refugees or internally displaced persons) to voluntarily return to their land and homes or any other location within their country should be recognized and that all possible steps should be taken to assist them to exercise that right.

b. General Assembly

The Secretary-General transmitted 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, in accordance with Human Rights Council resolution 15/8.[284] The report focused on the realization of the right to adequate housing in post-disaster settings. The report assessed human rights standards and guidelines relevant to an approach to disaster response based on the right to adequate housing and discussed some existing limitations.

(iv) *Access to safe drinking water and sanitation*

a. Human Rights Council

On 24 March 2011, the Human Rights Council adopted resolution 16/2 entitled "The human right to safe drinking water and sanitation" without a vote. The Council, *inter alia*, reaffirmed the fact that international human rights law instruments, including the Inter-

[282] A/66/269.

[283] A/HRC/16/42.

[284] A/66/270.

national Covenant on Economic, Social and Cultural Rights, 1966,[285] the Convention on the Elimination of All Forms of Discrimination against Women, 1979,[286] the Convention on the Rights of the Child, 1989[287] and the Convention on the Rights of Persons with Disabilities, 2006[288] 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 took note of the statement of the Committee on Economic, Social and Cultural Rights on the right to sanitation dated 19 November 2010,[289] as a complement to the Committee's general comment No. 15 (2002) on the right to water.[290]

The Special Rapporteur on the human right to safe drinking water and sanitation, Ms. Catarina de Albuquerque, submitted her report to the Human Rights Council.[291] The report focused on national and local planning for the implementation of the rights to water and to sanitation. The Special Rapporteur recommended, *inter alia*, that States must first aim at basic access for everyone and then move progressively towards higher levels of service; highlighted that human rights law provides a framework for ambitious, but realistic planning to address these issues; and emphasized that the human rights framework puts a strong emphasis on accountability, and that legal frameworks provide the basis for accountability by allowing people to base their claims on legally binding entitlements.

On 28 September 2011, the Human Rights Council adopted, resolution 18/1, entitled "The human right to safe drinking water and sanitation", without a vote. Recalling the same international instruments as set out in its resolution 16/2, the Council welcomed the third annual report of the Special Rapporteur, and reaffirmed that States have the primary responsibility to ensure the full realization of all human rights, and must take steps, nationally and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, to achieve progressively the full realization of the right to safe drinking water and sanitation by all appropriate means, including particularly the adoption of legislative measures in the implementation of their human rights obligations. The Council called upon States, *inter alia*, to assess whether their existing legislative and policy framework is in line with the right to safe drinking water and sanitation, and to repeal, amend or adapt it in order to meet human rights standards and principles as necessary.

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[285] United Nations, *Treaty Series*, vol. 993, p. 3.

[286] *Ibid*., vol. 1249, p. 13.

[287] *Ibid*., vol. 1577, p. 3.

[288] *Ibid*., vol. 2515, p. 3.

[289] E/C.12/2010/1.

[290] E/C.12/2002/11.

[291] A/HRC/18/33.

b. General Assembly

The Special Rapporteur on the human right to safe drinking water and sanitation, Ms. Catarina de Albuquerque, submitted her report to the General Assembly[292] pursuant to General Assembly resolution 64/292 of 28 July 2010. The report reviews the major issues surrounding the resources available for the realization of the rights to water and sanitation. It considers several principal sources of financing within the sectors and offers suggestions on how these can be augmented and improved through alignment with human rights principles. The report also addresses additional challenges to adequate financing, such as institutional fragmentation and lack of transparency.

(v) *Right to health*

a. Human Rights Council

The Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Mr. Calin Georgescu, submitted his report to the Human Rights Council.[293] In the report, the Special Rapporteur focused on the adverse effects that the unsound management and disposal of medical waste may have on the enjoyment of human rights, and recommended, *inter alia*, that States that have not yet adopted a specific law on health-care waste management to protect human health and the environment from the adverse effects of improper management and disposal of hazardous medical waste consider doing so.

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 three reports to the Human Rights Council. The first report, entitled "Expert consultation on access to medicines as a fundamental component of the right to health",[294] contained a summary of the discussions held and the recommendations made at the expert consultation on access to medicines as a fundamental component of the right to health, held in Geneva on 11 October 2010, in accordance with the Human Rights Council resolution 12/24. The Special Rapporteur set out that the expert consultation suggests States should, *inter alia*, establish an adequate legal framework for the realization of the right to access to medicines; take measures to ensure equality for all individuals and groups, such as disadvantaged minorities; and establish mechanisms to limit the impact of intellectual property rights and protect unhindered access to medicines. The second report,[295] examined the ways in which human rights, and the right to health framework more specifically, could add value to development policies and programmes. Using the example of HIV/AIDS, the Special Rapporteur considered projects in which a human rights-based approach had been utilized, and explored the value added of that approach. A third report containing a thematic study on the realization of the right to health of older persons was subsequently submitted.[296] The Special Rapporteur underlined that the right-to-health approach is

[292] A/66/255.

[293] A/HRC/18/31.

[294] A/HRC/17/43.

[295] A/HRC/17/25.

[296] A/HRC/18/37.

indispensable for the design, implementation, monitoring and evaluation of health-related policies and programmes to mitigate the consequences of an ageing society and to ensure the enjoyment of this human right by older persons, and recommended implementing the right-to-health framework so as to shift the discourse surrounding older persons from a needs-based perspective to a rights-based approach, which would enable a greater realization of the right to health of older persons.

On 25 March 2011, the Human Rights Council adopted resolution 16/28 entitled "The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS)", without a vote. The resolution urged all States, *inter alia*, to eliminate gender-based discrimination, stigma, violence and abuse; to ensure that women could decide freely and responsibly on matters relating to their sexuality through, *inter alia,* the provision of health-care services, including sexual and reproductive health, information and education based on scientific evidence, and to integrate the promotion and protection of reproductive rights, as understood in previous international commitments, as components of national strategies on HIV/AIDS.

On 17 June 2011, the Human Rights Council adopted resolution 17/14, entitled "The right of everyone to the enjoyment of the highest attainable standard of physical and mental health in the context of development and access to medicines", without a vote. In the resolution, the Council, *inter alia*, recalled the Declaration on the Right to Development,[297] and recognized the progressive realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as one of the central aspects of the process of development, as reflected in health-related internationally agreed development goals, in particular the Millennium Development Goals.[298]

On 28 September 2011, the Council adopted resolution 18/2, entitled "Preventable maternal mortality and morbidity and human rights", without a vote. The Council recognized, *inter alia*, that a human rights-based approach to eliminate preventable maternal mortality and morbidity is an approach underpinned by the principles of, *inter alia,* accountability, participation, transparency, empowerment, sustainability, non-discrimination and international cooperation.

b. General Assembly

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 interim report to the General Assembly.[299] The Special Rapporteur focused on the interaction between criminal laws and other legal restrictions relating to sexual and reproductive health and the right to health, and considered the impact of criminal and other legal restrictions on abortion; conduct during pregnancy; contraception and family planning; and the provision of sexual and reproductive education and information.

The Special Rapporteur located his analysis within existing international law instruments, including: the International Covenant on Economic, Social and Cultural Rights,

[297] General Assembly resolution 41/128 of 4 December 1986, annex.

[298] A/56/326, annex.

[299] A/66/254.

1966,[300] particularly article 12(2)(a); the Convention on the Elimination of All Forms of Discrimination against Women, 1979,[301] particularly articles 5, 10 (h), 11, 12 (1) and 16; and the Convention on the Rights of the Child, 1989.[302]

The Special Rapporteur recommended, *inter alia*, that States decriminalize the supply and use of all forms of contraception and voluntary sterilization for fertility control and remove requirements for spousal and/or parental consent; decriminalize the provision of information relating to sexual and reproductive health, including evidence-based sexual and reproductive health education; and decriminalize abortion, including related laws, such as those concerning abetment of abortion.

(vi) *Cultural rights*

a. Human Rights Council

The Independent Expert on cultural rights, Ms. Farida Shaheed, submitted a report to the Human Rights Council.[303] The report investigates the extent to which the right of access to and enjoyment of cultural heritage forms part of international human rights law, including the conventions adopted by the United Nations Educational, Scientific and Cultural Organization, such as, the Convention for the Protection of the World Cultural and Natural Heritage of 1972,[304] the Convention on the Protection of the Underwater Cultural Heritage of 2001,[305] and the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003.[306]

On 17 June 2011, the Human Rights Council adopted resolution 17/15, entitled "Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity", without a vote. The resolution took note of general comment No. 21 on the right of everyone to take part in cultural life, adopted by the Committee on Economic, Social and Cultural Rights on 13 November 2009. It reaffirmed that cultural rights are an integral part of human rights, which are universal, indivisible, interrelated and interdependent. The resolution recognized the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress and its applications, and recalled that, as stated in the Universal Declaration on Cultural Diversity,[307] no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

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[300] United Nations, *Treaty Series*, vol. 993, p. 3.

[301] *Ibid*., 1249, p.13.

[302] *Ibid*., vol. 1577, p.3.

[303] A/HRC/17/38.

[304] United Nations, *Treaty Series,* vol. 1037, p.151.

[305] United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Thirty-first Session, Paris, 15 October–3 November 2001*, vol. 1 and corrigendum, *Resolutions*, chap. V, resolution 24.

[306] United Nations, *Treaty Series,* vol. 2368, p. 3.

[307] United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Thirty-first Session, Paris, 15 October–3 November 2001*, vol. 1 and corrigendum, *Resolutions*, chap. V, resolution 25.

b. General Assembly

On 19 December 2011, the General Assembly adopted resolution 66/154, entitled "Human rights and cultural diversity", on the recommendation of the Third Committee, by a recorded vote of 136 in favour, 53 against and 2 abstentions,. The Assembly recognized, *inter alia*, the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress and its applications.

(*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. Juan Méndez, submitted his report to the Human Rights Council.[308] In his report, the Special Rapporteur advocated for a victim-centred approach to the work of his mandate. The Special Rapporteur set out his belief that all human rights standards are subject to "progressive development," in that they evolve in accordance with new repressive actions and features. In this regard, he emphasized that it is important to consolidate current interpretations of what constitutes torture and cruel, inhuman and degrading treatment or punishment, and to insist on effective implementation of States' obligations to prevent and to punish violations. In keeping with the progressive development of international jurisprudence, the Special Rapporteur stated his belief that expansive interpretations of norms are possible as long as they better protect individuals from torture and cruel, inhuman or degrading treatment or punishment. The Special Rapporteur intended to engage constructively with States to ensure respect and adherence to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984,[309] particularly in relation to articles 4 and 15 of the Convention.

b. General Assembly

The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, submitted his interim report to the General Assembly.[310] Focusing on the issue of solitary confinement, the Special Rapporteur concluded, *inter alia*, that solitary confinement can amount to a breach of article 7 of the International Covenant on Civil and Political Rights, 1966[311] and to an act covered by article 1 or article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. The Special Rapporteur set out a series of guiding principles, internal safeguards and external safeguards to ensure the use of solitary confinement respects the inherent dignity of all human beings, as protected by article 10 of the International Covenant on Civil and Political Rights, 1966.

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[308] A/HRC/16/52.

[309] United Nations, *Treaty Series*, vol. 1465, p. 85.

[310] A/66/268.

[311] United Nations, *Treaty Series*, vol. 999, p. 171.

On 19 December 2011, the General Assembly adopted resolution 66/150, entitled "Torture and other cruel, inhuman or degrading treatment or punishment", on the recommendation of the Third Committee. Adopted without a vote, the resolution stressed that an independent, competent domestic authority must promptly, effectively and impartially investigate all allegations of torture or other cruel, inhuman or degrading treatment or punishment, as well as wherever there is reasonable ground to believe that such an act has been committed, and that those who encourage, order, tolerate or perpetrate such acts must be held responsible, brought to justice and punished in a manner commensurate with the severity of the offence, including the officials in charge of any place of detention or other place where persons are deprived of their liberty, where the prohibited act is found to have been committed. The Assembly considered, *inter alia*, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)[312] to be a useful tool in efforts to prevent and combat torture and recalled the updated set of principles for the protection and promotion of human rights through action to combat impunity. The Assembly emphasized, *inter alia,* that acts of torture in armed conflict were serious violations of international humanitarian law and in this regard constituted war crimes and that acts of torture could constitute crimes against humanity. Bearing in mind the principle of complementarity, the Assembly also encouraged States that had not yet done so to consider ratifying or acceding to the Rome Statute of the International Criminal Court.[313]

(ii) *Arbitrary detention and extrajudicial, summary and arbitrary execution*

a. Human Rights Council

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Christof Heyns, in his annual report to the Human Rights Council[314] analysed the activities and working methods of the mandate over the past year. The report examined the legal norms applicable to the use of lethal force during demonstrations, with the Special Rapporteur concluding, *inter alia*, that the overreaching principle in respect of the use of deadly weapons by law enforcement officials should be self-defence. The Special Rapporteur recommended, *inter alia*, that the basic principles for managing demonstrations should be elaborated more clearly, so as to set out the international law standards applicable to demonstrations (non-violent and violent; legal and illegal), with special reference to the use of (deadly) force by the police during demonstrations; this could be done by an expert group, or by the Human Rights Committee as a general comment on articles 6 and 21 of the International Covenant on Civil and Political Rights, 1966.[315]

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[312] General Assembly resolution 55/89 of 4 December 2000.

[313] United Nations, *Treaty Series,* vol. 2187, p. 3.

[314] A/HRC/17/28 (covered the activities of the Special Rapporteur from March 2010 to April 2011).

[315] United Nations, *Treaty Series*, vol. 999, p. 171.

b. General Assembly

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Christof Heyns, submitted his report to the General Assembly.[316] The report focused on the international standards relevant to the use of lethal force during arrest. The Special Rapporteur indicated that, in principle, the starting point is the sanctity of life. International norms in this regard are premised on what has been called the "protection of life principle": the right to life may be limited only in order to protect life. The report stated that the frameworks established by international law provide sufficient room to deal with serious as well as less serious security threats. The Special Rapporteur recommended, *inter alia*, that law reforms should be undertaken to bring domestic laws on arrest into conformity with international standards.

(iii) *Enforced disappearances and missing persons*

a. Human Rights Council

The Human Rights Council Advisory Committee submitted its report on best practices in the matter of missing persons.[317] The study construed "missing persons" as those whose families are without news of them, as well as those who are reported, on the basis of reliable information, as unaccounted for as a result of an international or non-international armed conflict. The report did not cover cases of people going missing as a result of other situations, for example, natural disasters or internal violence or disturbances. On the other hand, the term "missing persons" as used in the study was different from and broader in scope than "enforced or involuntary disappearance" as defined in the International Convention for the Protection of All Persons from Enforced Disappearance, 2006.[318] The study set out that the international obligations to prevent and resolve situations of missing persons in connection with armed conflict are based on both international humanitarian law and international human rights law.

The Working Group on Enforced or Involuntary Disappearances submitted its annual report to the Human Rights Council,[319] detailing communications and cases examined by the Working Group during its three sessions in 2011. The Working Group finalized a general comment on the right to recognition as a person before the law in the context of enforced disappearances, declaring that enforced disappearance represents a paradigmatic violation of the right to be recognized before the law. The Working Group also referred to its general comment on enforced disappearance as a continuous crime and "consider[ed] that an enforced disappearance [was] a unique and consolidated act, and not a combination of acts" and as such, the violation of the right to recognition as a person before the law lasted until the disappearance ended, that is to say when the fate or the whereabouts of the person had been determined.

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[316] A/66/330.

[317] A/HRC/16/70.

[318] General Assembly resolution 61/177 of 20 December 2006, annex.

[319] A/HRC/19/58.Rev.1 (the annual report covered the period from 13 November 2010 to 11 November 2011).

On 24 March 2011, the Human Rights Council adopted resolution 16/16, without a vote, entitled "Enforced or involuntary disappearances". In the resolution, the Council, *inter alia*, welcomed the entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance on 23 December 2010. 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[320] 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, ratifying or acceding to 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, namely, a declaration by State parties that recognized the competency of the Committee on Enforced Disappearances, and allowed the Committee to receive and consider communications in relation to alleged violations of the Convention.

b. General Assembly

The General Assembly adopted resolution 66/160, entitled "International Convention for the Protection of All Persons from Enforced Disappearance" on 19 December 2011, on the recommendation of the Third Committee, without a vote. The Assembly welcomed the entry into force on 23 December 2010 of the International Convention for the Protection of All Persons from Enforced Disappearance, 2006, and recognized that its implementation will be a significant contribution to ending impunity and to promoting and protecting all human rights for all. The Assembly called upon States that have 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, namely, a declaration by State parties that recognized of the competency of the the Committee on Enforced Disappearances, and allowed the Committee to receive and consider communications in relation to alleged violations of the Convention.

(iv) *Integration of human rights of women and a gender perspective*[321]

a. Human Rights Council

The Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, submitted a report to the Human Rights Council.[322] The Special Rapporteur focused on a holistic approach to understanding the relationship between discrimination and violence against women, one that drew upon a well-established foundation of human rights treaties and declarations passed by various bodies of the United Nations during four decades of transnational cooperation, and locating solutions to violence against women in combating multiple forms of discrimination.

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[320] United Nations, *Treaty Series*, vol. 2187, p. 3.

[321] For more information on the rights of women, see section 6 of this chapter.

[322] A/HRC/17/26.

On 17 June 2011, the Human Rights Council adopted resolution 17/11, entitled "Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention", without a vote. The Council, *inter alia*, called upon States to treat all forms of violence against women and girls as a criminal offence, punishable by law, and emphasized the duty to provide victims with access to just and effective remedies and specialized assistance, including medical and psychological assistance, as well as effective counseling. The Council additionally urged States, *inter alia*, to take all appropriate measures to amend or repeal existing laws or to modify legal or customary practices which sustain the persistence and tolerance of violence against women and girls.

b. General Assembly

The Secretary-General transmitted the interim report of the Special Rapporteur on the independence of judges and lawyers, Ms. Gabriela Knaul, to the General Assembly.[323] The report addressed the need to consider and integrate a gender perspective in the criminal justice system as a fundamental step towards allowing equal access to justice for women and men and in respect of the role to be played by judges and lawyers. The Special Rapporteur suggested that applying a human rights-based approach was the best instrument with which to guide States and other international and national actors alike, and to allow the development of laws, rules of procedures and jurisprudence that respect internationally, as well as nationally, recognized legal principles of equality between women and men and non-discrimination on the grounds of gender.

The Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, submitted a report entitled "Advancement of women".[324] The report provides an overview of the mandate's work and main findings and the challenges that women continued to encounter, and presented specific recommendations to address violence against women through a holistic framework based on States' obligations to respect, protect and fulfil the human rights of women and girls.

On 19 December 2011, the General Assembly adopted five resolutions on the topic of women and human rights, on the recommendation of the Third Committee ,[325] of which one is highlighted herein. In resolution 66/132, adopted without a vote, entitled "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly", the General Assembly *inter alia*, invited States parties to the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW),[326] to review their reservations lodged to the Convention regularly with a view to withdrawing them.

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[323] A/66/289.

[324] A/66/215.

[325] General Assembly resolution 66/128, entitled "Violence against women migrant workers"; resolution 66/129, entitled "Improvement of the situation of women in rural areas"; resolution 66/130, entitled "Women and political participation"; resolution 66/131, entitled "Convention on the Elimination of All Forms of Discrimination against Women"; and resolution 66/132, 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".

[326] United Nations, *Treaty Series*, vol. 1249, p. 13.

On 22 December 2011, the General Assembly adopted resolution 66/216 that focused on women in development, on the recommendation of the Second Committee, without a vote. In this resolution, the General Assembly recognized, *inter alia*, the mutually reinforcing links between gender equality and poverty eradication and the achievement of the Millennium Development Goals.[327]

(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.[328] The annual report contained, *inter alia*, an overview of the activities taken by the Special Rapporteur, and a thematic analysis of the right to an effective remedy for trafficked persons. The Special Rapporteur concluded, *inter alia*, that all States of origin, transit or destination have an international legal obligation to provide remedies for trafficked persons where an act or omission attributable to them breaches an international obligation. In the context of trafficking, which involved in most cases the conduct of private persons, it was important to recall that States were obliged to provide remedies for trafficked persons where they failed to exercise due diligence to prevent and combat trafficking in persons or to protect the human rights of trafficked persons. The Special Rapporteur noted that the right to an effective remedy was also a fundamental human right in itself and that States have a duty to respect, protect and fulfil this right. While discussions on the right to an effective remedy for trafficked persons at the international level had often focused on the right to compensation, it was stressed that other components, such as recovery, restitution, satisfaction and guarantees of non-repetition, were equally important aspects of a remedy. The Special Rapporteur submitted a set of draft basic principles on the right to an effective remedy for trafficked persons.

b. General Assembly

The Special Rapporteur on trafficking in persons, especially women and children, Ms. Joy Ngozi Ezeilo, submitted her annual report to the General Assembly.[329] The report included a thematic focus on the right to an effective remedy for trafficked persons. The report also provided a similar framework and set of conclusions as the report the Special Rapporteur had presented to the Human Rights Council in April 2011.

(vi) *Freedom of religion, belief and expression*

a. Human Rights Council

The Special Rapporteur on freedom of religion or belief, Mr. Heiner Bielefeldt, submitted his annual report.[330] The report focused on the theme of freedom of religion or

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[327] A/56/326, annex.

[328] A/HRC/17/35 (the annual report covered the period from 1 March 2010 to 1 March 2011).

[329] A/66/283 (the report covered the period from 1 August 2010 to 31 July 2011).

[330] A/HRC/16/53.

belief and school education; referring to relevant international human rights documents, the elimination of stereotypes and prejudices, the issue of religious symbols in the school context and religious instruction in schools. The Special Rapporteur concluded, *inter alia*, that with regard to the freedom to manifest one's religion or belief, both the positive and the negative aspects of that freedom must be equally ensured, i.e. the freedom to express one's conviction as well the freedom not to be exposed to any pressure, especially from State authorities or in the State institution, to practice religious or belief activities against one's will.

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, submitted a report to the Human Rights Council which explored key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet.[331] The report underlined the applicability of international human rights norms and standards on the right to freedom of opinion and expression to the Internet as a communication medium, and set out the exceptional circumstances under which the dissemination of certain types of information may be restricted. The Special Rapporteur addressed two dimensions of Internet access respectively: (a) access to content; and (b) access to the physical and technical infrastructure required to access the Internet in the first place.

The Special Rapporteur concluded, *inter alia*, that as with offline content, when a restriction was imposed as an exceptional measure on online content, it must pass a three-part, cumulative test: (1) it must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency); (2) it must pursue one of the purposes set out in article 19, paragraph 3, of the International Covenant on Civil and Political Rights, 1966[332] namely: (i) to protect the rights or reputations of others; (ii) to protect national security or public order, or public health or morals (principle of legitimacy); and (3) it must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality). The Special Rapporteur suggested in addition that any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner that was neither arbitrary nor discriminatory. There should also be adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application.

The Special Rapporteur further concluded that legitimate online expression was being criminalized in contravention of States' international human rights obligations, whether through the application of existing criminal laws to online expression, or through the creation of new laws specifically designed to criminalize expression on the Internet**.** The Special Rapporteur underscored that protection of national security or countering terrorism could not be used to justify restricting the right to expression unless it could be demonstrated that: (a) the expression was intended to incite imminent violence; (b) it was likely to incite such violence; and (c) there was a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

[331] A/HRC/17/27.

[332] United Nations, *Treaty Series*, vol. 999, p. 171.

On 24 March 2011, the Human Rights Council adopted resolution 16/13 entitled "Freedom of religion or belief", without a vote. The resolution recalled General Assembly resolution 36/55 of 25 November 1981, by which the General Assembly adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and recalled article 18 of the International Covenant on Civil and Political Rights, 1966, article 18 of the Universal Declaration of Human Rights[333] and other relevant human rights provisions. The Council stressed that everyone had the right to freedom of thought, conscience and religion or belief, which included the freedom to have or to adopt a religion or belief of one's choice, and the freedom, either alone or in community with others and in public or private, to manifest one's religion or belief in teaching, practice, worship and observance, including the right to change one's religion or belief. The resolution emphasized that no religion should be equated with terrorism, as this may have adverse consequences for the enjoyment of the right to freedom of religion or belief of all members of the religious community concerned, and that States should exercise due diligence to prevent, investigate and punish acts of violence against persons belonging to religious minorities, regardless of the perpetrator, and that failure to do so may constitute a human rights violation.

b. General Assembly

The Special Rapporteur on freedom of religion or belief, submitted his interim report entitled "Elimination of all forms of religious intolerance".[334] The Special Rapporteur focused on the role of the State in promoting interreligious communication. The concept of "interreligious communication" was understood to include various forms of exchange of information, experiences and ideas of all kinds between individuals and groups belonging to different theistic, atheistic and non-theistic beliefs, or not professing any religion or belief. The Special Rapporteur concluded that States had to respect, protect and promote the freedom to: communicate within one's own religious or belief group, to share one's conviction with others, to broaden one's horizons by communicating with people of different convictions, to cherish and develop contacts across State boundaries, to receive and spread information about religious or belief issues and to try to persuade others by means of peaceful communication.

The Secretary-General transmitted the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, which explored key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet.[335] The report provided a similar framework and conclusions as the report the Special Rapporteur had submitted to the Human Rights Council.

The General Assembly adopted two resolutions addressing issues of freedom or belief on 19 December 2011, both adopted on the recommendation of the Third Committee, without a vote. In resolution 66/167, entitled "Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons,

[333] General Assembly resolution 217 A (III) of 10 December 1948.

[334] A/66/156.

[335] A/66/290.

based on religion or belief", the General Assembly called upon all States, *inter alia*, to adopt measures and policies to promote the full respect for and protection of places of worship and religious sites, cemeteries and shrines, and to take measures in cases where they were vulnerable to vandalism or destruction.

In resolution 66/168, entitled "Elimination of all forms of intolerance and of discrimination based on religion or belief", the General Assembly emphasized that, *inter alia*, as underlined by the Human Rights Committee, restrictions on the freedom to manifest one's religion or belief are permitted only if limitations are prescribed by law, are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, are non-discriminatory and are applied in a manner that does not vitiate the right to freedom of thought, conscience and religion or belief. The Assembly additionally emphasized that States have an obligation to exercise due diligence to prevent, investigate and punish acts of violence against persons belonging to religious minorities, regardless of the perpetrator, and that failure to do so might constitute a human rights violation.

(*g*) Rights of the child

a. Human Rights Council

The report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Najat Maalla M'jid, and the Special Representative of the Secretary-General on Violence against Children, Ms. Marta Santos Pais, submitted a joint report to the Council.[336] The report provided an overview of accessible and child-sensitive counselling, complaint and reporting mechanisms to address incidents of violence, including sexual violence and exploitation, and drew attention to positive developments and persisting challenges. The report also highlighted the legal obligations, roles and responsibilities of State institutions and other key stakeholders, and made recommendations for the strengthening of those mechanisms to safeguard children's right to freedom from all forms of violence. Such international legal standards included several articles of the Convention on the Rights of the Child, 1989,[337] particularly articles 19, 24, 28, 34 to 36, 37 and 39.

On 24 March 2011, the Human Rights Council adopted resolution 16/12, entitled "Rights of the child: a holistic approach to the protection and promotion of the rights of children working and/or living on the street", without a vote. The Council emphasized in the resolution that the Convention on the Rights of the Child, 1989, constitutes the standard in the promotion and protection of the rights of the child, and recalled the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182)[338] and the Convention concerning Minimum Age for Admission to Employment, 1973 (No. 138)[339] of the International Labour Organization. The resolution recognized that prostitution of children is a serious form of exploitation and violence and a crime against those most vulnerable, and that States parties should prohibit

[336] A/HRC/16/56.

[337] United Nations, *Treaty Series*, vol. 1577, p. 3.

[338] *Ibid.,* vol. 2133, p.161.

[339] *Ibid.,* vol. 1015, p. 297.

it in accordance with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000.[340]

On 17 June 2011, the Human Rights Council adopted resolution 17/18, without a vote, on the "Optional Protocol to the Convention on the Rights of the Child on a communications procedure". The text of the proposed Optional Protocol was recommended to the General Assembly for adoption.

On 29 September 2011, resolution 18/12, entitled "Human rights in the administration of justice, in particular juvenile justice" was adopted by the Human Rights Council, without a vote. The resolution recognized that that every child and juvenile in conflict with the law must be treated in a manner consistent with his or her rights, dignity and needs, in accordance with international law, bearing in mind relevant international standards on human rights in the administration of justice, and called on States parties to the Convention on the Rights of the Child, 1989, to abide strictly by its principles and provisions. The Human Rights Council encouraged States not to set the minimum age of criminal responsibility at too low an age level, bearing in mind the emotional, mental and intellectual maturity of the child, and, in this respect, referred to the recommendation of the Committee of the Rights of the Child to increase the lower minimum age of criminal responsibility without exception to the age of 12 years as the absolute minimum age, and to continue to increase it to a higher age level. The Council additionally urged States to ensure that, under their legislation and practice, neither capital punishment nor life imprisonment without the possibility of release would be imposed for offences committed by persons under 18 years of age.

b. General Assembly

The Special Representative of the Secretary-General on Violence against Children, submitted her annual report to the General Assembly.[341] The report reviewed key developments and initiatives promoted to advance progress in the follow-up to the study at the global, regional and national levels, institutionalize regional governance structures and strengthen strategic alliances to speed up global progress towards a world free from violence. The Special Representative highlighted her continued attention to promoting the universal ratification of the Optional Protocols to the Convention on the Rights of the Child.

The Secretary General submitted a report pursuant to General Assembly resolution 64/145 of 18 December 2009, entitled "The girl child", which provided a brief overview of international obligations and commitments with respect to the girl child.[342] The report assessed the negative impact on the girl child caused by poverty and global economic crisis; violence, abuse and exploitation; gender disparities in education; lack of adequate water, sanitation and hygiene; nutrition; HIV/AIDS; health, disabilities; humanitarian crises; and participation, and highlighted action taken to address child and forced marriage.

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[340] *Ibid.,* vol. 2171, p. 227.

[341] A/66/227.

[342] A/66/257.

On 19 December 2011, the General Assembly adopted four resolutions[343] on the rights of children, on the recommendation of the Third Committee, of which one was highlighted herein. In resolution 66/138, adopted without a vote, the General Assembly adopted the "Optional Protocol to the Convention on the Rights of the Child on a communications procedure".

c. Security Council

The Security Council adopted resolution 1998 (2011), unanimously, on 12 July 2011. The resolution focused on the widespread impact of armed conflict on children. The Security Council called on all parties to armed conflicts to comply strictly with the obligations applicable to them under international law for the protection of children in armed conflict, including those contained in the Convention on the Rights of the Child, 1989, and its Optional Protocol on the involvement of Children in armed conflict, 2000,[344] as well as the Geneva Conventions of 12 August 1949[345] and their Additional Protocols of 1977.[346] The Security Council strongly condemned all violations of applicable international law involving the recruitment and use of children by parties to armed conflict, as well as their re-recruitment, killing and maiming, rape and other sexual violence, abductions, attacks against schools or hospitals and denial of humanitarian access by parties to armed conflict and all other violations of international law committed against children in situations of armed conflict.

(*h*) Migrants

a. Human Rights Council

The Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante, submitted his final report to the Human Rights Council.[347] The Special Rapporteur highlighted the topics he had focused on (irregular migration and criminalization of migrants, protection of children in the migration process and the right to housing and health of migrants), and thematic issues that he suggested may be worthwhile to consider in the future (migration in the context of climate change, and the political participation and civil rights of migrants).

Mr. François Crépeau succeeded Mr. Bustamante as the Special Rapporteur on the human rights of migrants in August 2011.

On 30 September 2011, the Human Rights Council adopted resolution 18/21, entitled "The human rights of migrants", without a vote. The Council, *inter alia*, bore in mind the obligations of States under international law, as applicable, to exercise due diligence to

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[343] General Assembly resolutions 66/138, entitled "Optional Protocol to the Convention on the Rights of the Child on a communications procedure"; resolution 66/139, entitled "Strengthening collaboration on child protection within the United Nations system"; resolution 66/140, entitled "The girl child"; resolution 66/141, entitled "Rights of the child".

[344] *Ibid.*, vol. 2173, p. 222.

[345] *Ibid.*, vol. 75, p. 31, 85, 135 and 287.

[346] *Ibid.*, vol. 1125, p. 3 and 609.

[347] A/HRC/17/33.

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 violated and impaired or nullified 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.[348] The Council expressed its concern at legislation and measures adopted by some States that could restrict the human rights and fundamental freedoms of migrants, and reaffirmed that, when exercising their sovereign right to enact and implement migratory and border security measures, States had the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants. The Council also called upon all States to ensure that their immigration policies were consistent with their obligations under international human rights law.

b. General Assembly

The Special Rapporteur on human rights of migrants, Mr. Jorge Bustamante, submitted his final annual report to the General Assembly.[349] The report provided an overview of the six years that Mr. Bustamante had acted as Special Rapporteur, and highlighted the thematic issues he had focused on: criminalization of irregular migration, protection of children in the context of migration, and the rights of migrants to health and adequate housing.

The Secretary-General submitted a report to the General Assembly pursuant to General Assembly resolution 65/212, entitled "Protection of migrants".[350] The report included information on the status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, and on the activities of the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, the Special Rapporteur on the human rights of migrants, the universal periodic review process of the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights. The Secretary-General underlined that States had an obligation under the core international human rights instruments to protect the human rights of all individuals under their jurisdiction, regardless of their nationality or legal status, including migrants who were in an irregular situation.

On 19 December 2011, the General Assembly adopted resolution 66/128, entitled "Violence against women migrant workers", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, called upon all Governments to incorporate a human rights, gender sensitive and human-development-oriented perspective in legislation, policies and programmes on international migration and on labour and employment, consistent with their human rights obligations and commitments under human rights instruments, for the prevention of and protection of migrant women against violence and discrimination, exploitation and abuse, and to take effective measures to ensure that such

[348] United Nations, *Treaty Series*, vol. 2220, p. 3.

[349] A/66/264 (the report covered the period from 1 August 2010 to 31 July 2011).

[350] A/66/253.

migration and labour policies did not reinforce any form of discrimination, including by conducting impact assessment studies of such legislation, policies and programmes and reporting on the impact of measures taken and the results achieved in regard to women migrant workers.

On the same day, the General Assembly adopted resolution 66/172, entitled "Protection of migrants", on the recommendation of the Third Committee, without a vote. The Assembly called upon States, *inter alia*, 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. The Assembly urged, *inter alia*, States parties to the United Nations Convention against Transnational Organized Crime, 2000[351] and supplementing protocols thereto, namely, the Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000,[352] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000[353] to implement them fully, and called upon States that had not done so to consider ratifying or acceding to them as a matter of priority.

(*i*) Internally displaced persons

a. Human Rights Council

The Special Rapporteur on the human rights of internally displaced persons, Dr. Chaloka Beyani, submitted a report to the Human Rights Council.[354] The report set out the activities undertaken by the outgoing Representative of the Secretary-General on the human rights of internally displaced persons, Mr. Walter Kälin, during his tenure. The Special Rapporteur also set out his priority areas and themes, including: the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009 (Kampala Convention);[355] natural disasters and climate change; women and internal displacement; and, internally displaced persons outside camps.

b. General Assembly

The Special Rapporteur on the human rights of internally displaced persons, submitted his annual report to the General Assembly.[356] After outlining the major activities undertaken by the mandate holder during the period under review, the report presented a thematic analysis of climate change and internally displaced persons. The Special Rap-

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[351] United Nations, *Treaty Series,* vol. 2225, p. 209.

[352] *Ibid*., vol. 2241, p. 507.

[353] *Ibid*., vol. 2237, p. 319.

[354] A/HRC/16/43.

[355] Adopted by a Special Summit of the African Union, held in Kampala, Uganda, on 22 October 2009.

[356] A/66/285 (the report covered the period between August 2010 and July 2011).

porteur recommended, *inter alia,* that a human rights-based approach should be used to inform and strengthen all actions, at the local, regional, national and international levels, to address climate change-related internal displacement. The Special Rapporteur also recommended that specific guidance be developed for Member States on how to ensure that displacement was taken into account in the climate change debate, on the normative standards and guidance documents that were available and on the human rights implications and broader dynamics of climate changed-induced displacement. The Guiding Principles on Internal Displacement,[357] which were based on standards in international human rights law, humanitarian law and, by analogy, refugee law, provided a sound legal framework for implementation by States at the national level through legislation, policies and institutions. The Special Rapporteur concluded that in order to achieve concrete results and establish stronger operational and accountability structures, greater focus must be placed on policy and programme implementation at the regional, national and subnational levels.

On 19 December 2011, the General Assembly adopted resolution 66/165, entitled "Protection of and assistance to internally displaced persons", on the recommendation of the Third Committee, without a vote. The Assembly recalled, *inter alia*, the relevant norms of international law, including international human rights law, international humanitarian law and international refugee law, and recognized that the protection of internally displaced persons had been strengthened by identifying, reaffirming and consolidating specific standards for their protection, in particular through the Guiding Principles on Internal Displacement.[358] The Assembly welcomed, *inter alia*, the adoption of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa[359] during the Summit of the African Union held in Kampala, in October 2009, and invited African States to consider signing and/or ratifying the Convention.

On the same day, the General Assembly adopted resolution 66/135, entitled "Assistance to refugees, returnees and displaced persons in Africa" on the recommendation of the Third Committee, without a vote,. The Assembly emphasized, *inter alia,* that States have the primary responsibility to provide protection and assistance to internally displaced persons within their jurisdiction, as well as to address the root causes of the displacement problem, in appropriate cooperation with the international community. The Assembly recognized, *inter alia,* that no solution to displacement could be durable unless it was sustainable, and therefore encouraged the Office of the High Commissioner to support the sustainability of voluntary return, reintegration and resettlement.

(*j*) Minorities

a. Human Rights Council

The Independent Expert on Minority Issues, Ms. Gay McDougall, presented her report to the Human Rights Council.[360] The Independent Expert focused on her work to promote implementation of the Declaration on the Rights of Persons Belonging to Nation-

[357] E/CN.4/1998/53/Add.2, annex.

[358] *Ibid*.

[359] Available at http://www.au.int (accessed on 31 December 2011).

[360] A/HRC/16/45.

al or Ethnic, Religious and Linguistic Minorities, 1992,[361] and on the role of the protection of minority rights in conflict prevention. The report emphasized, *inter alia*, that while there has been added emphasis placed on the prevention of certain specific crimes, including genocide, war crimes, ethnic cleansing and crimes against humanity, violent conflicts that do not fit those definitions may also warrant additional attention. The report recommended that States should implement comprehensive anti-discrimination legislation that must provide for effective, transparent enforcement mechanisms which can be accessed easily by all.

b. General Assembly

The General Assembly adopted resolution 66/166, entitled "Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities", on the recommendation of the Third Committee, without a vote. The Assembly reaffirmed the obligation of States to ensure that persons belonging to national or ethnic, religious and linguistic minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law, as proclaimed in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and drew attention to the relevant provisions of the Durban Declaration and Programme of Action,[362] including the provisions on forms of multiple discrimination.

(*k*) Indigenous issues

a. Human Rights Council

The Special Rapporteur on the rights of indigenous peoples, Mr. James Anaya, presented his report to the Human Rights Council.[363] The Special Rapporteur devoted the second half of the report to an analysis of the impact of extractive industries operating within or near indigenous territories. The Special Rapporteur considered that his mandate was well placed within the wider United Nations human rights system to promote the operationalization of indigenous peoples' rights and related institutional guarantees in the context of resource extraction and development operations, in a manner that built on the work of the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises. This effort could be pursued through the development of specific guidelines or principles aimed at helping States, corporate actors and indigenous peoples in fulfilling the responsibilities that arose from international indigenous rights standards. The Special Rapporteur indicated his intention to present a set of specific guidelines or principles in 2013.

On 29 September 2011, the Human Rights Council adopted resolution 18/8, entitled "Human rights and indigenous peoples", without a vote. The Council, *inter alia*, encouraged those States that had not yet ratified or acceded to the Convention concerning Indig-

[361] General Assembly resolution 47/135 of 18 December 1992.

[362] See *Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, 31 August—8 September 2001* (A/CONF.189/12 and Corr.1), chap. I.

[363] A/HRC/18/35.

enous and Tribal Peoples in independent countries, 1989 (No. 169)[364] of the International Labour Organization to consider doing so and to consider supporting the United Nations Declaration on the Rights of Indigenous Peoples, 2007.[365] The Council, *inter alia*, requested the Secretary-General, in cooperation with the Office of the High Commissioner, the Office of Legal Affairs and other relevant parts of the Secretariat, to prepare a detailed document on the ways and means of promoting participation at the United Nations of recognized indigenous peoples' representatives on issues affecting them, given that they were not always organized as non-governmental organizations, and on how such participation might be structured, drawing from, for example, the rules governing the participation in various United Nations bodies by non-governmental organizations

b. General Assembly

The Special Rapporteur on the rights of indigenous peoples, Mr. James Anaya, presented his report to the General Assembly.[366] The report provided an overview of the activities carried out by the Special Rapporteur on the rights of indigenous peoples during the first three-year term of his mandate. The report included summaries of the thematic studies that the Special Rapporteur had included in the annual reports he had submitted to the Human Rights Council. Those included studies on the United Nations Declaration on the Rights of Indigenous Peoples, 2007; the duty of States to consult with and obtain the consent of indigenous peoples before adopting measures that affect them; the responsibility of corporations to respect the rights of indigenous peoples; and, building on those themes, issues related to extractive industries operating in or near indigenous peoples' traditional territories.

On 19 December 2011, the General Assembly adopted resolution 66/142, entitled "Rights of indigenous peoples", on the recommendation of the Third Committee, without a vote. The General Assembly stressed the importance of promoting and pursuing the objectives of the United Nations Declaration on the Rights of Indigenous Peoples, 2007, and encouraged those States that had not yet ratified or acceded to the International Labour Organization Convention concerning Indigenous and Tribal Peoples in independent countries, 1989 (No. 169) to consider doing so and to consider supporting the United Nations Declaration on the Rights of Indigenous Peoples, and welcomed the increased support by States for the Declaration.

(*l*) Terrorism and human rights[367]

a. Human Rights Council

On 29 September 2011, the Human Rights Council adopted resolution 18/10 entitled "Human rights and issues related to terrorist hostage-taking". The Council, *inter alia*, underlined the importance of the ratification of all relevant international conventions against terrorism, especially the International Convention for the Suppression of

[364] United Nations, *Treaty Series*, vol. 1650, p. 383.

[365] General Assembly resolution 61/295 of 13 September 2007, annex.

[366] A/66/288.

[367] For further information on terrorism, see sections 2 (g) and 16 (h) of this chapter.

the Financing of Terrorism, 1999[368] and the International Convention against the Taking of Hostages, 1979.[369] The Council reaffirmed that all acts of terrorism, including acts of hostage-taking, wherever and by whomever they were committed, were serious crimes aimed at the destruction of human rights and were, under all circumstances, unjustifiable.

b. General Assembly

The Secretary-General submitted a report pursuant to General Assembly 65/221, entitled "Protecting human rights and fundamental freedoms while countering terrorism".[370] The report referred to recent developments within the United Nations system in relation to human rights and counter-terrorism, including compliance of legislation, policies and practices for countering terrorism with international human rights law. The report detailed the activities, related to that topic, of the Counter-Terrorism Implementation Task Force, its Working Group on Protecting Human Rights while Countering Terrorism, the Counter-Terrorism Committee and its Executive Directorate, the Human Rights Council with its various special procedures mandates and other mechanisms, the human rights treaty bodies, and the Office of the United Nations High Commissioner for Human Rights. The Secretary-General concluded in the report, *inter alia*, that significant inconsistencies between domestic counter-terrorism legal frameworks and practices and international human rights standards, including vague and broad definitions of terrorism, lack of legal safeguards related to due process and fair trial guarantees, and practices of torture and ill-treatment of terrorist suspects remained. The report additionally encouraged the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate to continue their efforts to place respect for the rule of law and human rights at the core of the fight against terrorism in areas within the scope of their mandates.

The newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Ben Emmerson, submitted his first report to the General Assembly.[371] The report identified two substantive areas of interest falling within his mandate—the rights of victims of terrorism, and the prevention of terrorism—that he would focus his efforts upon.

On 9 December 2011, the General Assembly adopted resolution 66/105, entitled "Measures to eliminate international terrorism", without a vote. The Assembly, *inter alia,* affirmed that States must ensure that any measure taken to combat terrorism complies with all their obligations under international law and in this context, should adopt such measures in accordance with international law, in particular, international human rights, refugee and humanitarian law.

On 19 December 2011, the General Assembly adopted resolution 66/171, entitled "Protection of human rights and fundamental freedoms while countering terrorism", on the recommendation of the Third Committee, without a vote. The General Assembly emphasized the importance of properly interpreting and implementing the obligations of States with respect to torture and other cruel, inhuman or degrading treatment or punish-

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[368] United Nations, *Treaty Series,* vol. 2178, p. 197.

[369] *Ibid.,* vol. 1316, p. 205.

[370] A/66/204.

[371] A/66/310.

ment, and of abiding strictly by the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984[372] in the fight against terrorism. The Assembly also reaffirmed, *inter alia*, that all 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, including persons belonging to national or ethnic, religious and linguistic minorities, and in this regard should not be discriminatory on grounds such as race, colour, sex, language, religion or social origin.

(*m*) Promotion and protection of human rights

(i) *International cooperation and universal instruments*

a. Human Rights Council

On 25 March 2011, the Human Rights Council adopted resolution 16/22, entitled "Enhancement of international cooperation in the field of human rights", without a vote. In this resolution, the Council, *inter alia*, reaffirmed that it was 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 recognized that, in addition to their separate responsibilities to their individual societies, States had a collective responsibility to uphold the principles of human dignity, equality and equity at the global level.

b. General Assembly

On 17 June 2011, the General Assembly adopted resolution 65/281, entitled "Review of the Human Rights Council", by a vote of 154 in favour and 4 against. The Assembly decided, *inter alia*, to maintain the status of the Human Rights Council as one of its subsidiary bodies and to consider again the question of whether to maintain this status at an appropriate moment and at a time no sooner than ten years and no later than fifteen years; and to continue its practice of allocating the agenda item entitled "Report of the Human Rights Council" to the plenary of the General Assembly and to the Third Committee. The General Assembly further adopted the text entitled "Outcome of the review of the work and functioning of the Human Rights Council".

On 19 December 2011, the Assembly adopted resolution 66/152, entitled "Enhancement of international cooperation in the field of human rights", on the recommendation of the Third Committee, without a vote. The Assembly considered that international cooperation in the field of human rights, in conformity with the purposes and principles set out in the Charter of the United Nations and international law, should make an effective and practical contribution to the urgent task of preventing violations of human rights and fundamental freedoms.

On the same day, the Assembly adopted resolution 66/157, entitled "Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity", on the

[372] United Nations, *Treaty Series*, vol. 1465, p. 85.

recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, called upon all Member States to base their activities for the promotion and protection of human rights, including the development of further international cooperation in this field, on the Charter of the United Nations, the Universal Declaration of Human Rights,[373] the International Covenant on Economic, Social and Cultural Rights, 1966,[374] the International Covenant on Civil and Political Rights, 1966,[375] and other relevant international instruments, and to refrain from activities that were inconsistent with that international framework.

(ii) *Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights*

a. Human Rights Council

On 16 June 2011, the Human Rights Council adopted resolution 17/9, entitled "National institutions for the promotion and protection of human rights", without a vote. The Council reaffirmed the importance of the establishment and strengthening of effective, independent and pluralistic national institutions for the promotion and protection of human rights, in accordance with the Paris Principles.[376] The Council recognized, *inter alia*, the important role played by national institutions for the promotion and protection of human rights in the Human Rights Council, including its universal periodic review mechanism, in both preparation and follow-up, and the special procedures, as well as in the human rights treaty bodies.

b. General Assembly

On 19 December 2011, the General Assembly adopted resolution 66/169, entitled "National institutions for the promotion and protection of human rights", on the recommendation of the Third Committee, without a vote. The Assembly reaffirmed the importance of the development of effective, independent and pluralistic national institutions for the promotion and protection of human rights, in accordance with the Paris Principles.

(iii) *Human rights and the right to promote and protect universally recognized human rights*

a. Human Rights Council

The Special Rapporteur on the situation of human rights defenders, Ms. Margaret Sekaggya, submitted her annual report to the Human Rights Council.[377] The Special Rapporteur focused on the situation of women human rights defenders and those working on women's rights or gender issues, including an analysis of the legal framework surrounding human rights defenders. The report set out that the rights of women to participate in pub-

[373] General Assembly resolution 217 A (III) of 10 December 1948.

[374] United Nations, *Treaty Series*, vol. 993, p. 3.

[375] *Ibid.*, vol. 999, p. 171.

[376] General Assembly resolution 48/134 of 20 December 1993.

[377] A/HRC/16/44.

lic life, including through the promotion and protection of human rights, was contained in the Universal Declaration of Human Rights[378] and asserted in various international treaties, foremost among them the International Covenant on Civil and Political Rights, 1966,[379] the International Covenant on Economic, Social and Cultural Rights, 1966,[380] and the Convention on the Elimination of All Forms of Discrimination against Women, 1979.[381]

On 23 March 2011, the Human Rights Council adopted resolution 16/1, entitled "United Nations Declaration on Human Rights Education and Training", without a vote, through which it adopted the United Nations Declaration on Human Rights Education and Training as contained in the annex to the resolution. Article 1 of the Declaration stated that everyone had the right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights education and training.

On 29 September 2011, the Council adopted resolution 18/13, entitled "The role of prevention in the promotion and protection of human rights," without a vote. The Council recognized, *inter alia*, that States had the primary responsibility for the promotion and protection of all human rights, including the prevention of human rights violations, and that this responsibility involves all branches of the State, and stressed that States should promote supportive and enabling environments for the prevention of human rights violations, including, *inter alia*, by considering ratifying international human rights conventions and covenants, and by fully implementing international human rights conventions and covenants to which they are party.

b. General Assembly

The Secretary-General transmitted the report of the Special Rapporteur on the situation of human rights defenders, Ms Margaret Sekaggya, in accordance with General Assembly resolution 64/163.[382] The report aimed to build the capacity of human rights defenders to ensure respect for the rights that they were entitled to under the Declaration on Human Rights Defenders and contribute to the development of a safer and more conducive environment for defenders to be able to carry out their work. The Special Rapporteur concluded that the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders) was an instrument that was not sufficiently known or implemented. The Special Rapporteur recommended that States should refrain from stigmatizing the work of human rights defenders, recognize the role they play and ensure that national laws are developed in consultation with civil society and other relevant international agencies on the protection of defenders, with specific reference to the work of women human rights defenders.

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[378] General Assembly Resolution 217 A (III) of 10 December 1948.

[379] United Nations, *Treaty Series*, vol. 999, p. 171.

[380] *Ibid.*, vol. 993, p. 3.

[381] *Ibid.*, vol. 1249, p. 13.

[382] A/66/203.

On 19 December 2011, the General Assembly adopted resolution 66/137, entitled "United Nations Declaration on Human Rights Education and Training", on the recommendation of the Third Committee, without a vote. The Assembly invited, *inter alia,* Governments, agencies and organizations of the United Nations system, and intergovernmental and non-governmental organizations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof.

On 19 December 2011, the General Assembly also adopted resolution 66/173, entitled "Follow-up to the International Year of Human Rights Learning", without a vote. The Assembly welcomed *inter alia,* the adoption by the Human Rights Council of the Declaration of Human Rights Education and Training, and stressed the complementarity of human rights learning and the United Nations Declaration on Human Rights Education and Training.

On the same day, the General Assembly adopted resolution 66/164, entitled "Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", on the recommendation of the Third Committee, without a vote. The Assembly called upon all States, *inter alia*, to promote and give full effect to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,[383] including by taking, as appropriate, practical steps to that end.

(*n*) Persons with disabilities

a. Human Rights Council

On 24 March 2011, the Human Rights Council adopted resolution 16/15 entitled "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*, called upon States parties to the Convention on the Rights of Persons with Disabilities, 2006[384] to ensure that all international cooperation measures in the disability field were consistent with their obligations under the Convention; such measures could include, in addition to disability-specific initiatives, ensuring that international cooperation was inclusive of and accessible to persons with disabilities. The Council recalled that international cooperation was without prejudice to the obligation of each State party to the Convention to fulfil its obligations under the Convention.

b. Economic and Social Council

On 28 July 2011, the Economic and Social Council adopted resolution 2011/27, entitled "Further promotion of equalization of opportunities by, for and with persons with disabilities and mainstreaming disability in the development agenda", without a vote. The Council recalled the Convention on the Rights of Persons with Disabilities, 2006, and called upon Member States and United Nations bodies and agencies to include disability issues and persons with disabilities in reviewing progress towards achieving the Millen-

[383] General Assembly resolution 53/144 of 9 December 1998, annex.

[384] United Nations, *Treaty Series*, vol. 2515, p. 3.

nium Development Goals and to step up efforts to include in their assessment the extent to which persons with disabilities were able to benefit from efforts to achieve the Goals, and to enable persons with disabilities to participate as agents and beneficiaries of development, in particular in all efforts towards eradicating extreme poverty and hunger, achieving universal primary education, promoting gender equality and the empowerment of women, reducing child mortality, improving maternal health, combating HIV/AIDS, malaria and other diseases, ensuring environmental sustainability and developing a global partnership for development, were inclusive of and accessible to persons with disabilities.

c. General Assembly

On 19 December 2011, the General Assembly adopted resolution 66/124, entitled "High-level Meeting of the General Assembly on the realization of the Millennium Development Goals and other internationally agreed development goals for persons with disabilities", on the recommendation of the Third Committee, without a vote. The Assembly recalled its previous resolutions on the internationally agreed developing goals, including the Millennium Development Goals, and took note that persons with disabilities, who faced a greater risk of living in absolute poverty, made up an estimated 15 per cent of the world's population, of whom 80 per cent lived in developing countries. The Assembly decided, *inter alia,* to convene a one-day High-level Meeting of the General Assembly on 23 September 2013 with the overarching theme "The way forward: a disability-inclusive development agenda towards 2015 and beyond". The Assembly further decided that the High-level Meeting would result in a concise, action-oriented outcome document in support of the aims of the Convention on the Rights of Persons with Disabilities and the realization of the Millennium Development Goals and other internationally agreed development goals for persons with disabilities.

On 24 December 2011, the General Assembly adopted resolution 66/229, entitled "Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto", on the recommendation of the Third Committee, without a vote, The Assembly called upon those States that had not yet done so to consider signing and ratifying the Convention and the Optional Protocol as a matter of priority.

(*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.[385] The Special Rapporteur focused on child slavery in the artisanal mining and quarrying sector, and recommended that States ratify fully and implement all relevant international legal instruments to prevent child slavery, including, *inter alia*, the Slavery Convention, 1926,[386] and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956.[387]

[385] A/HRC/18/30 and Corr.1.

[386] United Nations, *Treaty Series* , vol. 212, p. 17.

[387] *Ibid.*, vol. 266, p. 3.

(*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

The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Mr. Cephas Lumina, submitted his report to the Human Rights Council.[388] The Independent Expert updated the Council on consultations concerning the draft general guidelines on foreign debt and human rights, which were still to be elaborated.

On 16 June 2011, the Human Rights Council adopted resolution 17/7 entitled "The effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights", by a recorded vote of 30 in favour, 13 against and 3 abstentions. The Council recalled the proposed elements for a conceptual framework for understanding the relationship between foreign debt and human rights, and affirmed, *inter alia*, that from a human rights perspective, the settlement of excessive vulture funds had a direct negative effect on the capacity of Governments to fulfil their human rights obligations, especially with regard to economic, social and cultural rights. The Council also recalled, *inter alia*, that every State had the primary responsibility to promote the economic, social and cultural development of its people and, to that end, had the right and responsibility to choose its means and goals of development and should not be subject to external specific prescriptions for economic policy. The Council called upon creditors, particularly international financial institutions, and debtors alike to consider the preparation of human rights impact assessments with regard to development projects, loan agreements or Poverty Reduction Strategy Papers.

b. General Assembly

The Secretary-General transmitted the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Mr. Cephas Lumina, to the General Assembly.[389] The report focused on the adverse impact of export credit agency-supported activities on sustainable development and the realization of human rights in the countries where such activities were undertaken. It also examined the contribution of export credits to the debt burdens of those countries. The Independent Expert concluded, *inter alia*, that under the international law of State responsibility, officially supported export credit agencies were organs or agents of the home State, and their wrongful acts or omissions could be attributable to that State. As such, home States would be under an obligation to regulate their activities. In addition, export credit agencies had a responsibility to respect human rights.

[388] A/HRC/17/37.

[389] A/66/271.

(ii) *Human rights and unilateral coercive measures*

a. General Assembly

The Secretary-General presented an annual report, entitled "Human rights and unilateral coercive measures", in accordance with General Assembly resolution 65/217.[390] The report set out the views of 11 Member States on human rights and unilateral coercive measures submitted to the Secretary-General.

On 19 December 2011, the General Assembly adopted resolution 66/156 entitled "Human rights and unilateral coercive measures", on the recommendation of the Third Committee, by a recorded vote of 137 in favour, to 54 against with no abstentions. The Assembly recalled article 1, paragraph 2, common to the International Covenant on Civil and Political Rights, 1966[391] and the International Covenant on Economic, Social and Cultural Rights, 1966,[392] which provided, *inter alia*, that in no case may a people be deprived of its own means of subsistence; and called upon Member States that had initiated unilateral coercive measures to abide by the principles of international law, the Charter of the United Nations, the declarations of the United Nations and world conferences and relevant resolutions, and to commit themselves to their obligations and responsibilities arising from the international human rights instruments to which they were parties by revoking such measures at the earliest possible time.

(iii) *Human rights and climate change*[393]

a. Human Rights Council

On 30 September 2011, the Human Rights Council adopted resolution 18/22, entitled "Human rights and climate change", without a vote. The Council affirmed, *inter alia*, that human rights obligations, standards and principles had the potential to inform and strengthen international and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes, and reiterated its concern that climate change posed an immediate and far-reaching threat to people and communities around the world and had adverse implications for the full enjoyment of human rights.

(iv) *Business and human rights*

a. Human Rights Council

The Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Mr. John Ruggie, presented the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" to the Human Rights Council.[394] The Special Representative stated that the Guiding Principles' normative contribution lay not in the

[390] A/66/272.

[391] United Nations, *Treaty Series*, vol. 999, p. 171.

[392] *Ibid.*, vol. 993, p. 3.

[393] For more information on the environment, see section 8 of this chapter.

[394] A/HRC/17/31.

creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses.

The Special Representative further presented a report to the Human Rights Council entitled, "Business and human rights in conflict-affected regions: challenges and options towards State responses".[395] He outlined a range of policy options that home, host and neighbouring States have, or could develop, to prevent and deter corporate-related human rights abuses in conflict contexts. The Special Representative concluded that States should consider how to take advantage of the variety of options available to them to respond to businesses and disregard good practices and one of the first steps was defining what risks or activities should prompt a State's response and what responses would be appropriate and necessary. The Special Representative's mandate concluded in June 2011.

On 16 June 2011, the Human Rights Council adopted resolution 17/4, entitled "Human rights and transnational corporations and other business enterprises", without a vote. The Council welcomed the work of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises and his submission of the Guiding Principles. The Council recognized, *inter alia*, the role of the Guiding Principles for the implementation of the 'Protect, Respect and Remedy' Framework, on which further progress could be made, as well as guidance that would contribute to enhancing standards and practices with regard to business and human rights, and thereby contribute to a socially sustainable globalization, without foreclosing any other long-term development, including further enhancement of standards.

6. Women[396] [397]

(*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 the 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-fifth session in New York on 12 March 2010 and from 22 February to 4 March and on 14 March 2011.[398] In accordance with the multi-year programme of work adopted by the Economic and Social Council,[399] the priority theme of the

[395] A/HRC/17/32.

[396] See also section 5 of this chapter on human rights.

[397] 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.

[398] Commission on the Status of Women, Report on the fifty-fifth session (12 March 2010, 22 February-4 March and 14 March 2011), *Official Records of the Economic and Social Council, 2011 Supplement No. 7* (E/2011/27 and E/CN.6/2011/12).

[399] Economic and Social Council resolution 2009/15 of 28 July 2009.

Commission was "Access and participation of women and girls to education, training, science and technology, including for the promotion of women's equal access to full employment and decent work" and progress was evaluated in the implementation of the agreed conclusions from the fifty-first session on "The elimination of all forms of discrimination and violence against the girl child".

During its fifty-fifth session, the Commission adopted two resolutions to be brought to the attention of the Economic and Social Council. In resolution 55/1, on "Mainstreaming gender equality and promoting empowerment of women in climate change policies and strategies", the Commission, *inter alia*, encouraged Governments to integrate a gender component into their periodic reporting as States parties to the United Nations Framework Convention on Climate Change, 1992.[400] The Commission also called upon Governments, including States parties to the United Nations Framework Convention on Climate Change, to continue to incorporate a gender perspective and make efforts to ensure the effective participation of women in the ongoing climate change talks leading to the seventeenth Conference of the Parties to the United Nations Framework Convention on Climate Change, to be held in Durban, South Africa, in 2011.

In resolution 55/2 regarding "Women, the girl child and HIV and AIDS", the Commission, *inter alia*, requested the Secretariat and co-sponsors of the Joint United Nations Programme on HIV/AIDS and other United Nations organizations responding to the HIV and AIDS pandemic, as well as the Global Fund to Fight AIDS, Tuberculosis and Malaria, to mainstream a gender and human rights perspective throughout their HIV- and AIDS-related operations, including policy, planning, monitoring and evaluation, and to ensure that programmes and policies are developed and adequately resourced to address the specific needs of women and girls.

(*b*) Economic and Social Council

On 14 July 2011, the Economic and Social Council adopted two resolutions focused on gender equality, the empowerment of women, and gender mainstreaming.

In resolution 2011/5, entitled "The role of the United Nations in implementing the internationally agreed goals and commitments in regard to gender equality and the empowerment of women", the Council recognized, *inter alia*, the efforts made by the United Nations system to promote more robust and better coordinated efforts to bridge the implementation gaps that still persisted in the achievement of gender equality and the empowerment of women. In this respect, it recalled all internationally agreed development goals, including the Millennium Development Goals and the cross-cutting issues identified in the ministerial declaration adopted at the high-level segment of the substantive session of 2010,[401] and urged the United Nations system and all other relevant entities, to strengthen efforts at all levels to end all forms of discrimination and violence against women and girls, including through an increased focus on prevention and the training of public officials, in particular those in law enforcement and judicial systems and health

[400] United Nations, *Treaty Series*, vol. 1771, p. 107.

[401] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 3* (A/65/3/Rev.1), chap. III, sect. F, para. 125.

service providers, and effective support for victims and survivors, while addressing the linkages between violence against women and other issues.

In resolution 2011/6, entitled "Mainstreaming a gender perspective into all policies and programmes in the United Nations system", the Council requested, *inter alia*, the United Nations system to continue to support Member States, with their agreement and consent, in the implementation of national policies for the achievement of gender equality and the empowerment of women, *inter alia*, by providing support and capacity development to national machineries for the advancement of women. It also requested the United Nations system, including its agencies, funds and programmes within their respective organizational mandates, to continue working collaboratively to enhance gender mainstreaming within the United Nations system, including by ensuring effective coordination on gender mainstreaming and gender equality and the empowerment of women within existing coordination mechanisms, including the United Nations System Chief Executives Board for Coordination, the High-Level Committee on Programmes, the High-Level Committee on Management, the United Nations Development Group and the Inter-Agency Network on Women and Gender Equality, led by UN-Women, with clear roles and responsibilities designated for all parts of the system.

(*c*) General Assembly

On 19 December 2011, the General Assembly adopted five resolutions focused on women and human rights without a vote, on the recommendation of the Third Committee.[402] Three of the resolutions are highlighted herein.

In resolution 66/128, entitled "Violence against women migrant workers", the General Assembly encouraged Member States, *inter alia*, to consider signing and ratifying or acceding to relevant International Labour Organization conventions and 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,[403] the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000,[404] and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000,[405] the 1954 Convention Relating to the Status of Stateless Persons[406] and the 1961 Convention on the Reduction of Statelessness,[407] as well as all other human rights treaties that contrib-

[402] General Assembly resolution 66/128, entitled "Violence against women migrant workers"; resolution 66/129, entitled "Improvement of the situation of women in rural areas"; resolution 66/130, entitled "Women and political participation"; resolution 66/131, entitled "Convention on the Elimination of All Forms of Discrimination against Women"; resolution 66/132, 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".

[403] United Nations, *Treaty Series*, vol. 2220, p. 3.

[404] *Ibid.*, vol. 2225, p. 209.

[405] *Ibid.,* vol. 2241, p. 480.

[406] *Ibid.*, vol. 360, p. 117.

[407] *Ibid.*, vol. 989, p. 175.

ute to the protection of the rights of women migrant workers, and also encouraged Member States to implement the Global Plan of Action to Combat Trafficking in Persons.[408]

In resolution 66/130, entitled "Women and political participation", the General Assembly called upon, *inter alia*, all States to eliminate laws, regulations and practices that, in a discriminatory manner, prevent or restrict women's participation in the political process. The Assembly urged, *inter alia*, all States to comply fully with their obligations under the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW),[409] and urged States that have not yet ratified or acceded to the Convention to do so, and urged States parties to the Convention to consider signing, ratifying or acceding to the Optional Protocol, 1999[410] thereto.

In resolution 66/132, entitled "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly", the Assembly reaffirmed the primary and essential role of the General Assembly and the Economic and Social Council, as well as the catalytic role of the Commission on the Status of Women, in promoting gender equality and the empowerment of women based on the full implementation of the Beijing Declaration[411] and Platform for Action[412] and the outcome of the twenty-third special session[413] of the Assembly and in promoting and monitoring gender mainstreaming within the United Nations system. The Assembly recognized, *inter alia*, that the implementation of the Beijing Declaration and Platform for Action and the fulfillment of the obligations of States parties under the CEDAW[414] are mutually reinforcing in respect of achieving gender equality and the empowerment of women, and in this regard welcomed the contributions of the Committee on the Elimination of Discrimination against Women to promoting the implementation of the Platform for Action and the outcome of the twenty-third special session, and invited States parties to the Convention to include information on measures taken to enhance implementation at the national level in their reports to the Committee under article 18 of the Convention. The Assembly also called upon States parties to comply fully with their obligations under CEDAW, and the Optional Protocol thereto, 1999,[415] and to take into consideration the concluding observations as well as the general recommendations of the Committee, the Assembly urged States parties to consider limiting the extent of any reservations that they lodged to the Convention, to formulate any reservations as precisely and narrowly as possible and to regularly review such reservations with a view to withdrawing them so as to ensure that no reservation was incompatible with the object and purpose of the Convention; the Assembly also urged all Member States that had not yet ratified or acceded to the Convention to consider

[408] General Assembly resolution 64/293 of 30 July 2010, annex.

[409] United Nations, *Treaty Series*, vol. 1249, p.13.

[410] *Ibid*., vol. 2131, p. 83.

[411] *Report of the Fourth World Women Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex 1.

[412] *Ibid*., annex II.

[413] General Assembly resolution S-23/2, annex, and resolution S-23/3, annex.

[414] United Nations, *Treaty Series*, vol. 1249, p. 13.

[415] *Ibid*., vol. 2131, p. 83.

doing so, and called upon those Member States that have not yet done so to consider signing and ratifying or acceding to the Optional Protocol.

On 22 December 2011, the General Assembly adopted resolution 66/216 focused on women in development without a vote, on the recommendation of the Second Committee. The General Assembly recognized, *inter alia*, the mutually reinforcing links between gender equality and poverty eradication and the achievement of the Millennium Development Goals. It called upon Member States, the United Nations system and other international and regional organizations, within their respective mandates, and all sectors of civil society, including non-governmental organizations, as well as all women and men, to fully commit themselves to intensifying their contributions to the implementation of the Beijing Declaration and the Platform for Action and the outcome of the twenty-third special session of the General Assembly. It also urged, *inter alia*, all Member States to eliminate discrimination against women in the field of education and ensure their equal access to all levels of education, training and advisory services and employment opportunities, and to further undertake a gender analysis of national labour laws and standards and to establish gender-sensitive policies and guidelines for employment practices, building in this regard on multilateral instruments, including the CEDAW and conventions of the International Labour Organization.

(*d*) UN-WOMEN

The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) was established by the General Assembly, pursuant to resolution 64/289 of 2 July 2010, to be operational as of 1 January 2011, as a composite entity, which consolidated the mandates and functions of the Office of the Special Adviser on Gender Issues and Advancement of Women, the Division for the Advancement of Women, the United Nations Development Fund for Women and the International Research and Training Institute for the Advancement of Women, to function as a secretariat with the additional role of leading, coordinating and promoting the accountability of the United Nations system in its work on gender equality and the empowerment of women.

The Executive Board of the UN-Women held three meeting sessions in New York in 2011.[416] During the 2011 sessions, the Executive Board adopted five decisions.[417] Two of these are highlighted herein.

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[416] See Reports of the Executive Board of the United Nations Entity for Gender Equality and the Empowerment of Women, The report of the first regular session of 2011, 24 to 26 January 2011 (UNW/2011/8); Report of the resumed first regular session of 2011, 21 March and 8 April 2011 (UNW/2011/8/Add.1); Report of the annual session of 2011, 27 to 30 June 2011 (UNW/2011/10); Report of the second regular session of 2011, 5 to 7 December 2011 (UNW/2012/2).

[417] Decisions adopted by the Executive Board of the United Nations Entity for Gender Equality and the Empowerment of Women at its 2011 sessions, decision 2011/1, entitled "Biennial support budget for the United Nations Entity for Gender Equality and the Empowerment of Women 2010–2011"; decision 2011/2, entitled "Proposed financial regulations and rules of the United Nations Entity for Gender Equality and the Empowerment of Women"; decision 2011/3, entitled "United Nations Entity for Gender Equality and the Empowerment strategic plan, 2011–2013; decision 2011/4, entitled "Least developed countries"; decision 2011/5, entitled "Biennial institutional budget for the United Nations Entity for Gender Equality and the Empowerment of Women for 2012–2013".

By its decision 2011/3 of 30 June 2011, entitled "United Nations Entity for Gender Equality and the Empowerment of Women strategic plan, 2012–2013", the Executive Board endorsed the strategic plan of UN-Women for 2011–2013,[418] which provided the framework and direction for the support extended to UN-Women to Member States; its partnerships with women's organizations and networks, other civil society organizations, academia and experts, the mass media and the private sector; and its efforts to build institutional capacity to undertake functions laid out in its founding resolution.

By its decision 2011/4 of 30 June 2011 entitled "Least developed countries", the Executive Board recognized the difficulties and challenges faced by the least developed countries in the area of gender equality and the empowerment of women, and in that regard welcomed the endorsement of the Istanbul Declaration and the Programme of Action for the Least Developed Countries for the Decade 2011–2020 by the General Assembly in its resolution 65/280 of 17 June 2011. It stressed the need for UN-Women, in accordance with its mandate, as called for in paragraph 153 of the Istanbul Programme of Action, and in paragraph 2 of General Assembly resolution 65/280, to give special attention to the least developed countries and to integrate the implementation of the Programme of Action into the activities of UN-Women, and requested the Executive Director to report thereon in her annual report.

(*e*) Security Council[419]

On 28 October 2011, the President of the Security Council issued a statement in connection with consideration of the item "Women and peace and security".[420] The Security Council, *inter alia*, urged all parties to fully comply with their obligations under the CEDAW, and the Optional Protocol thereto, 1999, and strongly encouraged states that had not ratified or acceded to the Convention and Optional Protocol to consider doing so. The Security Council reiterated its strong condemnation of all violations of applicable international law committed against women and girls in armed conflict and post-conflict situations and urged the complete cessation by all parties of such acts with immediate effect. The Security Council also urged Member States to bring to justice those responsible for crimes of such nature.

7. Humanitarian matters

(*a*) Economic and Social Council

On 21 July 2011, the Economic and Social Council adopted resolution 2011/8 entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations". The Council, *inter alia*, took note of the report of the Secretary-General[421] submitted under the agenda item, and of the "2011 Global Assessment Report on Disaster Risk

[418] See UNW/2011/9 and UNW 2011/13.

[419] See also section 2 of this chapter on peace and security.

[420] S/PRST/2011/20.

[421] A/66/81-E/2011/117.

Reduction: Revealing risk, redefining development".[422] The Council called upon the United Nations and its humanitarian partners to enhance accountability to Member States, including affected States, and all other stakeholders, and urged all actors engaged in the provision of humanitarian assistance to fully commit to and duly respect the guiding principles contained in the annex to General Assembly resolution 46/182, including the humanitarian principles of humanity, impartiality and neutrality, as well as the principle of independence as recognized by the Assembly in its resolution 58/114 of 17 December 2003. The Council also called upon all States and parties to comply fully with the provisions of international humanitarian law, including all the Geneva Conventions of 12 August 1949,[423] in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War,[424] in order to protect and assist civilians in occupied territories, and in that regard urged the international community and the relevant organizations of the United Nations system to strengthen humanitarian assistance to civilians in those situations.

(*b*) General Assembly

On 28 January 2011, the General Assembly adopted resolution 65/264, entitled "International cooperation on humanitarian assistance in the field of natural disasters, from relief to development", without a vote. The Assembly took note of the report of the Secretary-General,[425] and called upon States, *inter alia*, to fully implement the Hyogo Declaration[426] and the Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters,[427] in particular those commitments related to assistance for developing countries that were prone to natural disasters and for disaster-stricken States in the transition phase towards sustainable physical, social and economic recovery, for risk-reduction activities in post-disaster recovery and for rehabilitation processes.

On 18 November 2011, the General Assembly adopted resolution 66/12, entitled "Terrorist attacks on internationally protected persons", by a vote of 106 in favour, 9 abstentions and 40 against. 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 could never be justified.

On 15 December 2011, the General Assembly adopted resolution 66/117, entitled "Safety and security of humanitarian personnel and protection of United Nations personnel", without a vote. The Assembly, *inter alia*, recalled all relevant provisions of international law, including international humanitarian law and human rights law, as well as all

[422] Available at http://www.unisdr.org.

[423] United Nations, *Treaty Series*, vol. 75, pp. 31, 85, 135 and 287.

[424] *Ibid*., p. 287.

[425] A/65/356.

[426] A/CONF.206/6 and Corr.1, chap. I, resolution 1.

[427] *Ibid.,* resolution 2.

relevant treaties,[428] and emphasized that the primary responsibility under international law for the security and protection of humanitarian 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,[429] 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,[430] to the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, 2005,[431] 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,[432] 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,[433] the Convention on the Privileges and Immunities of the Specialized Agencies, 1947,[434] and the Convention on the Safety of United Nations and Associated Personnel, 2005.[435] The Assembly also noted with appreciation the progress reported in implementing the recommendations of the Independent Panel

[428] These included, 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).

[429] A/66/345.

[430] United Nations, *Treaty Series*, vol. 2187, p. 3.

[431] General Assembly resolution 60/518, annex.

[432] United Nations, *Treaty Series*, vol. 75, p. 287.

[433] *Ibid.*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

[434] *Ibid.*, vol. 33, p. 261.

[435] *Ibid.*, vol. 2051, p. 363.

on Safety and Security of United Nations Personnel and Premises Worldwide, including on accountability.[436]

On the same day, the General Assembly adopted resolution 66/119 entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations". 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.[437] The Assembly also welcomed the outcome of the fourteenth humanitarian affairs segment of the Economic and Social Council at its substantive session of 2011.[438] The Assembly reaffirmed the importance of implementing the Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters,[439] and took note with appreciation of the midterm review of the Hyogo Framework for Action, the outcome of the third session of the Global Platform for Disaster Risk Reduction, held in Geneva from 8 to 13 May 2011, and the 2011 Global Assessment Report on Disaster Risk Reduction.[440] 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,[441] 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[442] 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.

8. Environment

(*a*) United Nations Climate Change Conference in Durban

The United Nations Climate Change Conference was held in Durban, South Africa from 28 November to 9 December 2011. The seventeenth session of the Conference of State

[436] Available at http://www.un.org/News/dh/infocus/terrorism/PanelOnSafetyReport.pdf (accessed 31 December 2011).

[437] Available at http://www.au.int (accessed 31 December 2011).

[438] See A/66/3. For the final text, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 3*.

[439] A/CONF.206/6 and Corr.1, chap. I, resolution 2.

[440] United Nations publication, Sales No. 11.III.M.1.

[441] Available at http://www.ifrc.org (accessed 31 December 2011).

[442] E/CN.4/1998/53/Add.2, annex.

Parties to the United Nations Framework Convention on Climate Change, 1992,[443] and the seventh session of the Conference of Parties serving as the meeting of Parties to the Kyoto Protocol,[444] were held during the Conference.

The Conference of the State Parties to the United Nations Framework Convention on Climate Change adopted 19 decisions and one resolution.[445] By decision 1/CP.17, the Conference decided to launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, through a subsidiary body under the Convention; established and to be known as the Ad Hoc Working Group on the Durban Platform for Enhanced Action.[446] The Conference of Parties serving as the meeting of the Parties to the Kyoto Protocol adopted seven decisions and one resolution.[447]

(*b*) Economic and Social Council

By resolution 2011/14 of 25 July 2011, entitled "Promoting regional cooperation for enhanced energy security and the sustainable use of energy in Asia and the Pacific", the Economic and Social Council took note of resolution 67/2, adopted at the sixty-seventh session of the Economic and Social Commission for Asia and the Pacific, in which it, *inter alia*, requested the Executive Secretary to convene in 2013 the Asian and Pacific Energy Forum at the ministerial level to discuss the progress achieved in the Asia-Pacific region in addressing the energy security challenges at the regional, national and household levels and to facilitate continuous dialogue among member States with a view to enhancing energy security and working towards sustainable development.

[443] United Nations, *Treaty Series*, vol. 1771, p. 107.

[444] *Ibid*., vol. 2303, p. 162.

[445] For the report of the Conference of the Parties, see FCCC/CP/2011/9; FCCC/CP/2011/9/Add.1 and FCCC/CP/2011/9/Add.2.

[446] See, FCCC/CP/2011/9/Add.1.

[447] For the report of the Conference of the Parties, see FCCC/KP/CMP/2011/10, FCCC/KP/CMP/2011/10/Add.1 and FCCC/KP/CMP/2011/10/Add.2.

(*c*) General Assembly

On 22 December 2011, the General Assembly adopted, on the recommendation of the Second Committee, 14 resolutions related to the environment four of which are highlighted below.[448]

By resolution 66/194, entitled "Protection of coral reefs for sustainable livelihoods and development", adopted without a vote, the General Assembly took note of the report of the Secretary-General on the protection of coral reefs for sustainable livelihoods and development,[449] requested in its resolution 65/150 of 20 December 2010. The General Assembly also urged States to formulate, adopt and implement integrated and comprehensive approaches for the management of coral reefs and related ecosystems under their jurisdiction, encourages regional cooperation in accordance with international law regarding the protection and enhancement of the resilience of coral reefs.

In resolution 66/200, entitled "Protection of global climate for present and future generations of humankind", adopted without a vote, the General Assembly, recalled the outcome of the sixteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change and of the sixth session of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol, hosted in Cancun, Mexico, by the Government of Mexico from 29 November to 10 December 2010.[450] The Assembly underlined the importance of achieving an ambitious, substantive, holistic and balanced outcome through the ongoing negotiations at the Conference of the Parties to the Convention and the Meeting of the Parties to the Kyoto Protocol.

By resolution 66/201, entitled "Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa", adopted without a vote, the General Assembly, took note of the report of the Secretary-General on the implementation of resolution 65/160 and on the implementation of the United Nations Convention to Combat Desertification in Those

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[448] Resolutions related to the environment, adopted on 22 December 2011, are resolution 66/192 entitled "Oil slick on Lebanese shores"; resolution 66/193 entitled "International cooperation and coordination for the human and ecological rehabilitation and economic development of the Semipalatinsk region of Kazakhstan"; resolution 66/194 entitled "Protection of coral reefs for sustainable livelihoods and development"; resolution 66/196, entitled "Sustainable tourism and sustainable development in Central America"; resolution 66/197, 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 66/198, 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 66/200, entitled "Protection of global climate for present and future generations of humankind"; resolution 66/201, entitled "Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa"; resolution 66/202, entitled "Convention on Biological Diversity"; resolution 66/203, entitled "Report of the Governing Council of the United Nations Environment Programme on its twenty-sixth session"; resolution 66/204, entitled "Harmony with Nature"; resolution 66/205, entitled "Sustainable mountain development"; resolution 66/206, entitled "Promotion of new and renewable sources of energy"; and resolution 66/207, entitled "Implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II) and strengthening of the United Nations Human Settlements Programme (UN-Habitat)".

[449] A/66/298.

[450] FCCC/CP/2010/7/Add.1 and 2 and FCCC/KP/CMP/2010/12/Add.1 and 2.

Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.[451] The Assembly recommended the strengthening of the advisory role of the Committee for the Review of the Implementation of the Convention and the Committee on Science and Technology, through their recommendations, in order to monitor effectively the decisions of the Conference of the Parties to the Convention.

By resolution 66/202, entitled "Convention on Biological Diversity", the General Assembly took note of the report of the Executive Secretary of the Convention on Biological Diversity on the progress of work of the Conference of the Parties to the Convention.[452] The Assembly stressed the importance of the continued substantive consideration of the issue of biological diversity, and noted with appreciation the offer of the Government of India to host both the eleventh meeting of the Conference of the Parties to the Convention, to be held from 8 to 19 October 2012, and the sixth meeting of the Conference of the Parties serving as the Meeting of the Parties to the Cartagena Protocol, to be held from 1 to 5 October 2012.

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[453] to the General Assembly at its sixty-sixth session under the agenda item entitled "Oceans and the law of the sea." Pursuant to article 319, the report was also submitted to States parties to the United Nations Convention on the Law of the Sea, 1982 (the "Convention").[454] The report consisted of three parts.

The first part[455] contained information on environmental impact assessments undertaken with respect to planned activities in areas beyond national jurisdiction, including capacity-building needs. It also contained information on activities carried out by relevant organizations since the report of the Secretary-General of 19 October 2009 (A/64/66/Add.2). In addition, this part of the report provided information on possible options and approaches to promote international cooperation and coordination and on key issues and questions where more detailed background studies would facilitate consideration by States of those issues. That part of the report assisted the fourth meeting of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, which met from 31 May to 3 June 2011, in accordance with General Assembly resolution 65/37A.[456]

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[451] A/66/291, sect. II.

[452] *Ibid*., chap. III.

[453] A/66/70, A/66/70/Add.1 and A/66/70/Add.2. At the time of preparation of this chapter, the Secretary-General's report to the sixty-seventh session of the General Assembly was not published yet. It will contain further details on activities carried out in 2011. Therefore, for activities that have taken place in 2011 after the publication of A/66/70/Add.2, references have been made available to United Nations documents other than the report of the Secretary-General, wherever possible.

[454] United Nations, *Treaty Series*, vol. 1833, p. 3.

[455] A/66/70.

[456] See A/66/70.

The outcome of the meeting consisted of a set of recommendations to the sixty-sixth session of the General Assembly and a Co-Chairs' summary of discussions.[457]

The second part of the report[458] was prepared pursuant to paragraph 240 of General Assembly resolution 65/37 of 7 December 2010 to facilitate discussions on the topic of focus at the twelfth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea on the theme "Contributing to the assessment, in the context of the United Nations Conference on Sustainable Development, of progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges". It examined the relationship between the oceans and seas and sustainable development, described the relevant outcomes of the major summits on sustainable development, and provided an overview of the achievements and progress to date in the implementation of those outcomes on a sectoral basis. It also addressed some of the remaining gaps in implementation, as well as challenges and emerging issues, and set out a number of relevant conclusions.[459]

The third part of the report[460] 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. It also provided an overview of the work carried out in 2011 by the three bodies established by the Convention, namely the International Seabed Authority (ISA),[461] the International Tribunal for the Law of the Sea (ITLOS)[462] and the Commission on the Limits of the Continental Shelf (CLCS).[463]

In that part of the report, the Secretary-General also provided 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 those crimes.[464] The Security Council and the General Assembly continued to consider piracy and armed robbery at sea, in particular off the coast of Somalia and in the Gulf of Guinea, and adopted a number of resolutions for the repression of such acts.[465] In addition, a number of reports specifically addressing piracy and armed robbery against ships off the coast of Somalia were also issued in 2011. Those included the report of the Special Adviser to the Secretary-General on legal issues

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[457] See A/66/119.

[458] A/66/70/Add.1.

[459] The report on the work of the Informal Consultative Process at its twelfth meeting (A/66/186), prepared by the Co-Chairs, was transmitted to the Co-Chairs of the Bureau for the Preparatory Process of the United Nations Conference on Sustainable Development.

[460] A/66/70/Add.2.

[461] *Ibid*., chapter IV.A.

[462] *Ibid*., chapter IV.B.

[463] *Ibid*., chapter III.C. For information on the twenty-seventh (7 March-21 April 2011), resumed twenty-seventh (6–17 June 2011) and twenty-eighth (1 August-9 September 2011) sessions of the CLCS see A/66/70/Add.2, chapter III, section C, as well as CLCS/70 and CLCS/72. For more information on the resumed twenty-eighth session see the Statement of the Chairperson on the progress of work in the Commission at its twenty-ninth session, which, at the time of preparation of this chapter, has not been published yet.

[464] *Ibid.,* chapter VII.A.

[465] Security Council resolutions 1976 (2011); 2015 (2011); 2018(2011) and 2020 (2011).

related to piracy off the coast of Somalia,[466] and the report on the modalities of additional prosecution mechanisms, including on the participation of international personnel and on other international support and assistance, taking into account the work of the Contact Group on Piracy off the Coast of Somalia and in consultation with concerned regional States.[467] Both the Security Council and the General Assembly stressed the need for a comprehensive response in tackling piracy and its underlying causes. Pursuant to a request contained in Security Council resolution 1976 (2011) the Secretary-General reported on the protection of Somali natural resources and waters and on alleged illegal fishing and illegal dumping, including of toxic substances, off the coast of Somalia.[468] The Secretary-General also provided a comprehensive overview of measures being taken to combat piracy off the coast of Somalia during 2010 in a report prepared pursuant to Security Council resolution 1950 (2010).[469] A number of United Nations entities, including the International Maritime Organization (IMO), the United Nations Development Programme (UNDP), the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs (DOALOS) and the United Nations Office on Drugs and Crime (UNODC) also undertook capacity-building and technical assistance programmes to assist States in the repression of piracy and developed a number of tools for the benefit of States.

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"), the report of the Secretary-General noted the work of the Ad Hoc Working Group of the Whole of the General Assembly, which held its first meeting from 14 to 18 February. The second meeting of the regular process was held from 27 to 28 June 2011.[470]

The third part of the Secretary-General's report also provided an overview with regard to a number of other oceans-related issues, including 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;[471] State practice, maritime claims and delimitation of maritime zones;[472] international shipping activities;[473] people at sea;[474] maritime security;[475] marine scientific research, marine science and technology;[476] con-

[466] See S/2011/30.

[467] See S/2011/360.

[468] See S/2011/661.

[469] See S/2011/662.

[470] See A/66/70/Add.2, chapter XIV, section B.

[471] *Ibid*., chapter II, section A.

[472] *Ibid*., chapter III, section A.

[473] See A/66/70/Add.2, chapter V; see also: section 5 of chapter IIIB of this publication regarding the work of the International Maritime Organization.

[474] *Ibid*., chapter VI; see also: section 12 of this chapter regarding the activities of the United Nations High Commissioner for Refugees, section 1 of chapter IIIB regarding the work of the International Labour Organization and section 5 of chapter IIIB regarding the work of the International Maritime Organization.

[475] *Ibid*., chapter VII.

[476] *Ibid*., chapter VIII.

servation and management of marine living resources;[477] marine biological diversity;[478] protection and preservation of the marine environment and sustainable development;[479] climate change and oceans;[480] settlement of disputes relating to law of the sea matters by ITLOS and the International Court of Justice;[481] international cooperation and coordination[482]; and the capacity-building activities of DOALOS.[483]

The Secretary-General also published a report on the actions taken by States and regional fisheries management organizations and arrangements (RFMO/As) in response to paragraphs 80 and 83 to 87 of General Assembly resolution 61/105 and paragraphs 113 to 117 and 119 to 127 of General Assembly resolution 64/72 on sustainable fisheries, addressing the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks.[484] This report contained an overview of the impacts of bottom fisheries on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks.[485] It also described the actions taken by States and RFMO/As to address the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks[486] and the activities of the Food and Agriculture Organization of the United Nations to promote the regulation of bottom fisheries and the protection of vulnerable marine ecosystems.[487]

(*b*) Meeting of States Parties to the Convention

The twenty-first Meeting of States Parties[488] to the Convention took note of a number of reports relating to the ITLOS as well as of the information reported on the ISA and on the CLCS. An election was held at the Meeting to fill the seven seats on the Tribunal of the members whose terms of office were scheduled to expire on 30 September 2011.[489]

On 11 August 2011, a Special Meeting of the States Parties to the Convention[490] elected Mr. Tetsuro Urabe (Japan) to fill the vacancy which occurred owing to the passing away of Mr. Kensaku Tamaki (Japan). Mr. Urabe was elected for the remainder of Mr. Tamaki's term, which was scheduled to end on 15 June 2012.

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[477] *Ibid.*, chapter IX.

[478] *Ibid.*, chapter X; see also: section 2 of chapter IIIB regarding the work of the Food and Agriculture Organization of the United Nations; section 7 of chapter IIIB regarding the work of the World Intellectual Property Organization; and section 8 of the present chapter regarding the Environment.

[479] *Ibid.*, chapter XI; see also: section 8 of the present chapter regarding the Environment.

[480] *Ibid.*, chapter XII.

[481] *Ibid.*, chapter XIII.

[482] *Ibid.*, chapter XIV.

[483] *Ibid.*, chapter XV.

[484] A/66/307.

[485] *Ibid.*, chapter II.

[486] *Ibid.*, chapter III.

[487] *Ibid.*, chapter IV.

[488] See SPLOS/231.

[489] For more information on the election see *ibid.*, chapter IV, section C.

[490] See SPLOS/237.

(*c*) Consideration by the General Assembly

(i) *Reopening of agenda item*

The adoption of resolution 65/37 on 7 December 2010, entitled "Oceans and the law of the sea" marked the closing of item 74(a) of the agenda[491] of the sixty-fifth session of the General Assembly.[492] However, 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, met from 14 to 18 February 2011. In a letter dated 22 February 2011 addressed to the President of the General Assembly,[493] the Co-Chairpersons requested that the General Assembly be convened to consider their report as a matter of priority at its present session, based on the need to advance the Regular Process as soon as possible. This required the reopening of the agenda item.[494]

At its seventy-eighth plenary meeting, held on 15 March 2011, the General Assembly decided to reopen the agenda item. At that same meeting the decision to submit the above-mentioned report to the General Assembly at its present session was adopted.[495]

On 22 March 2011 informal consultations were held with a view to preparing a draft resolution endorsing the outcome of the meeting of February 2011. The draft resolution[496] was adopted by the General Assembly on 4 April 2011 as resolution 65/37 B.[497] The resolution, *inter alia*, enabled the Ad Hoc Working Group of the Whole to hold another meeting on 27 and 28 June 2011.[498]

(ii) *Oceans and law of the sea*

The General Assembly considered the agenda item entitled "Oceans and the law of the sea" on the basis of the following documents: the report of the Secretary-General,[499] the recommendations 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,[500] and the reports on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its twelfth meeting,[501]

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[491] A/65/251.

[492] See *United Nations Juridical Yearbook 2010* (United Nations Publication, Sales No. E.11.V.8), p. 207.

[493] A/65/759.

[494] A letter from the Co-Chairpersons of the Ad Hoc Working Group of the Whole to the Permanent Missions to the United Nations in New York dated 10 March 2011 set out the procedure which would be required to reopen agenda item 74(a). A draft decision of the General Assembly to request the Ad Hoc Working Group of the Whole to submit the above-mentioned report to the General Assembly at its present session was attached (A/65/L.61).

[495] A/65/PV.78.

[496] A/65/L.65, submitted on 23 March 2011.

[497] See A/65/PV.84. Because of the adoption of this second resolution under agenda item 74(a), resolution 65/37 of 7 December 2010 was renumbered as resolution 65/37 A.

[498] See above, section 9(a). See also A/66/189.

[499] A/66/70 and Add.1 and 2.

[500] A/66/119, annex, sect. I.

[501] See A/66/186.

on the twenty-first Meeting of States Parties to the Convention,[502] and 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.[503] The Assembly had also before it the document, entitled "Programme budget implications of draft resolution A/66/L.21—Report of the Fifth Committee".[504]

On 24 December 2011, the General Assembly adopted resolution 66/231 entitled "Oceans and the law of the sea", by a recorded vote of 135 in favour to 1 against, with 6 abstentions.

The resolution covered a wide range of ocean issues, such as the implementation of the Convention and related agreements and instruments; capacity-building; the Meeting of States Parties; peaceful settlement of disputes; the Area; effective functioning of the ISA and the ITLOS; the continental shelf and the work as well the workload of the CLCS; maritime safety and security and flag State implementation; marine environment and marine resources; marine biodiversity; marine science; the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects; the open-ended informal consultative process on oceans and the law of the sea; coordination and cooperation; and the activities of the Division. The resolution also addressed the commemoration of the thirtieth anniversary of the opening for signature of the Convention to be held in 2012.

(iii) *Sustainable fisheries*

The General Assembly also considered the agenda item "Oceans and the law of the sea: sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments". It had before it the following documents: report of the Secretary-General on the actions taken by States and RFMO/As in response to paragraphs 80 and 83 to 87 of General Assembly resolution 61/105 and paragraphs 113 to 117 and 119 to 127 of General Assembly resolution 64/72 on sustainable fisheries, addressing the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks; and letter dated 27 October 2011 from the Moderator of the Workshop to discuss implementation of paragraphs 80 and 83 to 87 of resolution 61/105 and paragraphs 117 and 119 to 127 of resolution 64/72 on sustainable fisheries, addressing the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks to the President of the General Assembly. The General Assembly adopted resolution 66/68 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", without a vote.

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[502] SPLOS/231.

[503] See A/66/189.

[504] See A/66/641.

The resolution was divided into 14 chapters and addressed a number of issues, including: achieving sustainable fisheries; implementation of the 1995 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; cooperation within the United Nations system; and activities of the Division for Ocean Affairs and the Law of the Sea.

10. Crime prevention and criminal justice[505]

(*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, 2003[506] 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 of the States Parties to the United Nations Convention against Corruption was held in Marrakech from 24 to 28 October 2011.

During this session, six resolutions and two decisions were adopted, relating to the mechanism for the review of implementation of the Convention; the convening of open-ended intergovernmental expert meetings to enhance international cooperation; the Marrakech Declaration on the Prevention of Corruption; international cooperation in asset recovery; the participation of signatories, non-signatories, entities and intergovernmental organizations in the work of the Implementation Review Group; and non-governmental organizations and the mechanism for the review of implementation of the Convention.[507]

(*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

[505] This section covers the sessions of the General Assembly, the Economic and Social Council and the Commission on Crime Prevention and Criminal Justice. Selected resolutions and decisions are highlighted. Resolutions recommending the adoption of subsequent resolutions by another organ are covered. For more detailed information and documents regarding this topic generally, see the website of the United Nations Office on Drugs and Crimes at http://www.unodc.org.

[506] United Nations, *Treaty Series,* vol. 2349, p. 41.

[507] See Report of the Conference of States Parties to the United Nations Convention against Corruption on its fourth session, held in Marrakech, 24 to 28 October 2011 (CAC/COSP/2011/14); see resolutions 4/1—4/6, and decision 4/1, entitled "Venue for the sixth session of the Conference of the States Parties to the United Nations Convention against Corruption", and decision 4/2, entitled "Venue for the seventh session of the Conference of the States Parties to the United Nations Convention against Corruption".

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 twentieth session of the CCPCJ was held in Vienna from 11 to 15 April 2011 and 12 to 13 December 2011, respectively. According to decision 2010/243 of 22 July 2010 taken by the Economic and Social Council, the prominent theme for the twentieth session of the Commission was "Protecting children in a digital age: the misuse of technology in the abuse and exploitation of children".

In its annual report,[508] CCPCJ brought to the attention of the Economic and Social Council a number of resolutions: resolution 20/1 entitled "Improving the governance and financial situation of the United Nations Office on Drugs and Crime: recommendations of the standing open-ended intergovernmental working group on improving the governance and financial situation of the United Nations Office on Drugs and Crime"; resolution 20/2 entitled "Implementation of the budget for the biennium 2010–2011 for the United Nations Crime Prevention and Criminal Justice Fund"; resolution 20/3 entitled "Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons"; resolution 20/4 entitled "Promoting further cooperation in countering transnational organized crime"; resolution 20/5 entitled "Combating the problem of transnational organized crime committed at sea"; resolution 20/6 entitled "Countering fraudulent medicines, in particular their trafficking"; and resolution 20/7 entitled "Promotion of activities relating to combating cybercrime, including technical assistance and capacity-building".

In resolution 20/3, the Commission, *inter alia*, urged Member States and invited the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, 2000,[509] other United Nations bodies and agencies, and other relevant international, regional and subregional organizations, within their respective mandates, to contribute to the full and effective implementation of the Global Plan of Action to Combat Trafficking in Persons,[510] including by means of strengthening cooperation and improving coordination among themselves in achieving that goal. The Commission also urged Member States that had not yet done so to consider ratifying or acceding to, as a matter of priority, the United Nations Convention against Transnational Organized Crime, 2000 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 supplementing the Convention[511] and requested the United Nations Office on Drugs and Crime (UNODC) to report biennially, starting in 2012, on patterns, forms and flows of trafficking in persons at all levels in a reliable and comprehensive manner, with a balanced perspective on both supply and demand, as a step towards, *inter alia*, improving the implementation of the Trafficking in Persons Protocol, in close cooperation

[508] *Official records of the Economic and Social Council 2011, Supplement No. 10* (E/2011/30—E/CN.15/2011/21) and *Official records of the Economic and Social Council 2011, Supplement No. 10A* (E/2011/30/Add.1).

[509] United Nations, *Treaty Series*, vol. 2225, p 209.

[510] General Assembly resolution 64/293 of 10 July 2010, annex.

[511] United Nations, *Treaty Series*, vol. 2237, p. 319.

and collaboration with Member States, and to share best practices and lessons learned from various initiatives and mechanisms.

In resolution 20/4, the Commission, *inter alia*, welcomed resolution 5/5 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, 2000, in which the Conference decided to establish a working group to explore options for establishing a mechanism or mechanisms to assist the Conference in the review of the implementation of the Convention and the Protocols thereto, and requested the UNODC to continue to provide technical assistance, upon request, to facilitate the ratification and implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, including to the secretariat of the Conference of the Parties to the Convention and its Open-ended Interim Working Group of Government Experts on Technical Assistance. The Commission noted that the technical assistance funding mechanisms called for in article 30, paragraph 2 (c), of the United Nations Convention against Transnational Organized Crime, 2000 and article 62, paragraph 2 (c), of the United Nations Convention against Corruption, 2003, had been established. The Commission also requested the UNODC to continue to provide support to the Conference and its working groups, including the Working Group on Trafficking in Persons and the Working Group on the Smuggling of Migrants in their work related to the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000.[512]

In resolution 20/5, the Commission, *inter alia*, requested the UNODC to convene an expert meeting with an advisory role towards the UNODC, with due regard to proportional regional and geographic participation and focusing on the central authorities of Member States and their maritime and other law enforcement experts, to survey the significant and multifaceted challenges to the criminal justice system in the investigation and prosecution of cases arising from organized criminal activities at sea, within the mandates of the UNODC, that were not already addressed in other forums or mechanisms, with a view to identifying specific areas where the Office and its resources could facilitate the investigation and prosecution of such cases by Member States, including by identifying gaps or possible areas for harmonization, and measures to strengthen national capacity, in particular in developing countries, to more effectively combat transnational organized crime.

In resolution 20/6, the Commission, *inter alia*, stressed that, for the purposes of that resolution and without prejudice to other accepted definitions or work in the area, "fraudulent medicines", usually referred to as "falsified medicines", included purported medicines whose contents were inert, were less than, more than or different from what was indicated, or had expired. The Commission urged Member States and relevant international and regional institutions, as appropriate, to strengthen and fully implement measures and mechanisms to prevent trafficking in fraudulent medicines and to strengthen international cooperation, including through the UNODC legal and operational technical assistance programmes, to increase the effectiveness of authorities in identifying and responding to trafficking in fraudulent medicines. The Commission also urged Member States to prevent trafficking in fraudulent medicines by introducing legislation, as appropriate, covering, in

[512] United Nations, *Treaty Series*, vol. 2241, p. 507.

particular, all offences related to fraudulent medicines, such as money-laundering, corruption and smuggling, as well as the confiscation and disposal of criminal assets, extradition and mutual legal assistance, to ensure that no stage in the supply chain of fraudulent medicines was overlooked.

In resolution 20/7, the Commission, *inter alia*, highlighted the utility of the United Nations Convention against Transnational Organized Crime, 2000 in strengthening international cooperation on the prevention, investigation and prosecution of cybercrime in cases where the offence was transnational in nature and involved an organized criminal group.

(*c*) Economic and Social Council

On 28 July 2011, following the submission by the Commission on Crime Prevention and Criminal Justice of draft resolutions, the Economic and Social Council adopted resolutions 2011/33 entitled "Prevention, protection and international cooperation against the use of new information technologies to abuse and/or exploit children; 2011/34 entitled "Support for the development and implementation of an integrated approach to programme development at the United Nations Office on Drugs and Crime"; 2011/35 entitled "International cooperation in the prevention, investigation, prosecution and punishment of economic fraud and identity-related crime"; and 2011/36 entitled "Crime prevention and criminal justice responses against illicit trafficking in endangered species of wild fauna and flora".

On the same day, the Economic and Social Council also adopted the following resolutions, which the Commission had recommended for adoption by the General Assembly; 2011/30 entitled "Follow-up to the Twelfth United Nations Congress on Crime Prevention and Criminal Justice and preparations for the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice"; 2011/31 entitled "Technical assistance for implementing the international conventions and protocols related to counter-terrorism"; 2011/32 entitled "Strengthening international cooperation in combating the harmful effects of illicit financial flows resulting from criminal activities"; and 2011/42 "Strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking".

(*d*) General Assembly

On 19 December 2011, the General Assembly adopted, on the recommendation of the Third Committee,[513] six resolutions under the agenda item entitled "Crime prevention and criminal justice", of which three are highlighted below.[514]

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[513] For the report of the Third Committee, see A/66/463.

[514] The General Assembly also adopted resolutions 66/179, entitled "Follow-up to the Twelfth United Nations Congress on Crime Prevention and Criminal Justice and preparations for the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice"; resolution 66/181, entitled "Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity"; resolution 66/182, entitled "United Nations African Institute for the Prevention of Crime and the Treatment of Offenders".

In resolution 66/177, entitled "Strengthening international cooperation in combating the harmful effects of illicit financial flows resulting from criminal activities", adopted without a vote, the General Assembly urged, *inter alia*, States parties to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988,[515] the United Nations Convention against Transnational Organized Crime, 2000, and the United Nations Convention against Corruption, 2003, to apply fully the provisions of those Conventions, in particular measures to prevent and combat money-laundering, including by criminalizing the laundering of proceeds of transnational organized crime, including as appropriate, drug trafficking and related offences provided for in the United Nations Convention against Transnational Organized Crime, and invited Member States that had not yet done so to consider becoming parties to those Conventions. The Assembly also considered that the review by the International Narcotics Control Board of the implementation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, was also relevant to the work of the Commission on Crime Prevention and Criminal Justice in the area of money laundering.

In resolution 66/178, entitled "Technical assistance for implementing the international conventions and protocols related to counter-terrorism", adopted without a vote, the General Assembly urged Member States, *inter alia*, that had not yet done so, to consider becoming parties to the existing international conventions and protocols related to terrorism, and requested the UNODC, within its mandate, in close coordination with the relevant entities of the Counter-Terrorism Implementation Task Force, to continue to provide technical assistance to Member States for the ratification and legislative incorporation of those international legal instruments. The Assembly stressed the importance of the development and maintenance of fair and effective criminal justice systems, in accordance with applicable international law, as a fundamental basis of any strategy to counter terrorism, and requested the UNODC, whenever appropriate, to take into account in its technical assistance to counter terrorism the elements necessary for building national capacity in order to strengthen criminal justice systems and the rule of law. The General Assembly additionally requested the UNODC, within its mandate, to continue to develop specialized legal knowledge in the area of counterterrorism and pertinent thematic areas of relevance to the mandate of the Office and to provide assistance to requesting Member States with regard to criminal justice responses to terrorism, including, where appropriate, nuclear terrorism, the financing of terrorism and the use of the Internet for terrorist purposes, as well as assistance to and support for victims of terrorism.

In resolution 66/180, entitled "Strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking", adopted without a vote, the General Assembly welcomed Economic and Social Council resolution 2010/19, as well as resolution 5/7, entitled "Combating transnational organized crime against cultural property", adopted by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime at its fifth session, held in Vienna from 18 to 22 October 2010. The Assembly urged, *inter alia*, Member States to consider, among other effective measures within the framework of their national legislation, criminalizing activities related to all forms and aspects of trafficking in cultural property and related offences by using a broad definition that could be applied to all stolen, looted,

[515] United Nations, *Treaty Series*, vol. 1582, p. 95.

unlawfully excavated and illicitly exported or imported cultural property, and invited them to make trafficking in cultural property, including stealing and looting at archaeological and other cultural sites, a serious crime, as defined in article 2 of the United Nations Convention against Transnational Organized Crime, 2000, with a view to fully utilizing that Convention for the purpose of extensive international cooperation in fighting all forms and aspects of trafficking in cultural property and related offences.

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 of 28 July 1999, 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-fourth regular and reconvened session,[516] held in Vienna 21 to 25 March and 12 to 13 December 2011, respectively, the Commission adopted seventeen resolutions[517] which were brought to the attention of the Economic and Social Council. Four of those resolutions are highlighted below.

In resolution 54/4 entitled "Follow-up on the proposal to organize an international workshop and conference on alternative development", the Commission, *inter alia*, bore in mind the provisions of the Single Convention on Narcotic Drugs, 1961,[518] that Convention as amended by the 1972 Protocol,[519] the Convention on Psychotropic Substances, 1971[520] and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.[521] The Commission also recalled the Political Declaration adopted by the General Assembly at its twentieth special session,[522] the Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development,[523] the Universal Declaration of Human Rights,[524] the United Nations Mil-

[516] For the report of the fifty-fourth session of the Commission on Narcotic Drugs, see *Official Records of the Economic and Social Council, 2011, Supplement Nos. 8 and 8A* (E/2011/28—E/CN.7/2011/15 and E/2011/28/Add.1—E/CN.7/2011/15/Add.1).

[517] For a complete list of the resolutions, see E/2011/28—E/CN.7/2011/15 and E2011/28/Add.1—E/CN.7/2011/15/Add.1.

[518] United Nations, *Treaty* Series, vol. 520, p. 151.

[519] *Ibid*., vol. 976, p. 3.

[520] *Ibid*., vol. 1019, p. 175.

[521] *Ibid*., vol. 1582, p. 95.

[522] General Assembly resolution S-20/2, of 10 July 1998, annex.

[523] General Assembly resolution S-20/4 E of 10 July 1998.

[524] General Assembly resolution 217 A (III) of 10 December 1948.

lennium Declaration[525] and, in particular, the Millennium Development Goals referring to extreme poverty and hunger (goal 1) and environmental sustainability (goal 7).[526]

In resolution 54/6 entitled "Promoting adequate availability of internationally controlled narcotic drugs and psychotropic substances for medical and scientific purposes while preventing their diversion and abuse", the Commission, *inter alia*, requested the United Nations Office on Drugs and Crime (UNODC), in consultation with the International Narcotics Control Board and the World Health Organization (WHO), to review and, where necessary, to update its model laws to ensure that they reflected an appropriate balance between ensuring adequate access to internationally controlled drugs and preventing their diversion and abuse, in line with the provisions of the international drug control conventions. The Commission also requested the UNODC to develop a technical guide explaining the revised model laws to support training and awareness-raising activities for its personnel in regional and country offices and to ensure that the model laws were accessible and readily understood by Member States.

In resolution 54/8 entitled "Strengthening international cooperation and regulatory and institutional frameworks for the control of precursor chemicals used in the illicit manufacture of synthetic drugs", the Commission, *inter alia*, urged Member States to further strengthen, update or, if they had not yet done so, establish national legislation and mechanisms relating to the control of precursors used in the illicit manufacture of drugs, pursuant to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The Commission encouraged Member States to adopt, where appropriate, regulatory frameworks to control the production, distribution and commercialization of pharmaceutical preparations containing ephedrine and pseudoephedrine, to prevent diversion, including through the sending of pre-export notifications, without impairing the availability of essential pharmaceutical preparations for medical use. The Commission also invited Member States to promote voluntary codes of conduct for the chemical industry, in accordance with the International Narcotics Control Board's Guidelines for a Voluntary Code of Practice for the Chemical Industry,[527] in order to promote responsible commercial practices and sale of chemicals, and prevent the diversion of chemicals to illicit drug manufacturing channels.

In resolution 54/10 entitled "Improving the governance and financial situation of the United Nations Office on Drugs and Crime: recommendations of the standing open-ended intergovernmental working group on improving the governance and financial situation of the United Nations Office on Drugs and Crime", the Commission, *inter alia*, reaffirmed the role of the Commission on Narcotic Drugs as the principal policymaking organ of the United Nations on matters of international drug control and as the governing body of the drug programme of the UNODC. The Commission also recommended that the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice should hold joint reconvened sessions limited to agenda items included in the operational segment of the agendas of both Commissions, with a view to providing integrated policy directives to the UNODC on administrative, budgetary and strategic management issues. In this context, the practice of holding back-to-back but separate reconvened sessions of

[525] General Assembly resolution 55/2 of 8 September 2000.

[526] A/56/326, annex.

[527] United Nations publication, Sales No. E.09.XI.17.

the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice should be continued, in order to deal with agenda items included in the normative segment of the agenda of each Commission.

(*b*) Economic and Social Council

On 28 July 2011, the Economic and Social Council adopted resolution 2011/34, 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 recommendation of the Commission on Narcotic Drugs. The Council, *inter alia*, welcomed the launch of the United Nations Office on Drugs and Crime Quality Control and Oversight Unit and the progress made so far in the operationalization of the Central American Integration System/United Nations Office on Drugs and Crime Mechanism. The Council also noted the presentation of the regional programme for the Arab States during the meeting of the standing open-ended intergovernmental working group on improving the governance and financial situation of the UNODC, held on 18 February 2011, and of its inauguration. Moreover, the Council looked forward to the development of regional programmes for Afghanistan and neighbouring countries, and Southern Africa, in consultation with the Member States of those regions, in the course of 2011; welcomed the establishment of centres of excellence in different countries of Latin America and the Caribbean as an important component for the effective implementation of regional and thematic programmes; and noted the possible establishment of such centres of excellence or similar institutions in other countries in the region.

(*c*) General Assembly

On 19 December 2011, the General Assembly adopted resolution 66/183, entitled "International cooperation against the world drug problem", on the recommendation of the Third Committee, without a vote.[528] The General Assembly, *inter alia*, reaffirmed the Political Declaration adopted by the General Assembly at its twentieth special session, the Declaration on the Guiding Principles of Drug Demand Reduction,[529] the Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development, the Action Plan for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction[530] and the joint ministerial statement adopted at the ministerial segment of the forty-sixth session of the Commission on Narcotic Drugs.[531] The Assembly welcomed the efforts made by Member States to comply with the provisions of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, the Convention on Psychotropic Substances, 1971 and the United Nations Convention against

[528] On 19 December 2011, the General Assembly also adopted resolutions 66/177 and 66/178, set out in section 10 (crime prevention).

[529] General Assembly resolution S-20/3 of 10 June 1998, annex.

[530] General Assembly resolution 54/132, of 17 December 1999, annex.

[531] See *Official Records of the Economic and Social Council, 2003, Forty-sixth Session, Supplement No. 8* (E/2003/28/Rev.1(SUPP)—E/CN.7/2003/19/Rev.1), chap. I, sect. C; see also A/58/124, sect. II.A.

Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.[532] 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 had 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 had psychoactive effects similar to those produced by cannabis. The Assembly reaffirmed that countering the world drug problem was a common and shared responsibility that had to be addressed in a multilateral setting, required an integrated and balanced approach and had to be carried out in full conformity with the purposes and principles of the Charter of the United Nations and other provisions of international law, such as the Universal Declaration of Human Rights, and the Vienna Declaration and Programme of Action[533] 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, 1988, 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, 1988, 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 parties 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,1961, as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the United Nations Convention against Transnational Organized Crime, 2000,[534] and the Protocols thereto[535] and the United Nations Convention against Corruption of 2003,[536] and took note of the World Drug Report 2011 of the United Nations Office on Drugs and Crime[537] and the most recent report of the International Narcotics Control Board.[538]

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[532] *Ibid*., vol. 1582, p. 95.

[533] *Report of the World Conference on Human Rights, Vienna, 14–25 June 1993* (A/CONF.157/23).

[534] United Nations, *Treaty Series*., vol. 2225, p. 209.

[535] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (United Nations, *Treaty Series*, vol. 2237, p. 319), Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000 (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, 2001 (United Nations, *Treaty Series*, vol. 2326, p. 208).

[536] United Nations, *Treaty Series*, vol. 2349, p. 41.

[537] United Nations publication, Sales No. E.11.XI.10.

[538] United Nations publication, Sales No. E.12.XI.5.

12. Refugees and displaced persons[539]

(*a*) Executive Committee of the Programme of the United Nations High Commissioner for Refugees[540]

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-second plenary session of the Executive Committee was held in Geneva from 3 to 7 October 2011.[541]

(*b*) United Nations Economic and Social Council

On 28 July 2011, the Economic and Social Council adopted decision 2011/263, 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-sixth session, decide on the question of enlarging the membership of the Executive Committee from eighty-five to eighty-seven States.

(*c*) General Assembly

On 9 December 2011, the General Assembly adopted resolution 66/72, entitled "Assistance to Palestine refugees", on the recommendation of the Fourth Committee, by a recorded vote of 160 in favour, 1 abstention and 8 against. The Assembly, *inter alia*, decided to invite Luxembourg, in accordance with the criterion 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.

On the same day, the General Assembly adopted resolution 66/74, entitled "Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East", on the recommendation of the Fourth Committee, by a recorded vote of 165 in favour, 7 against with 2 abstentions. 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, 1946,[542] and the Convention on the Safety of United Nations and Associated Personnel, 1994.[543] The Assembly affirmed the applicability of the Geneva Con-

[539] For complete lists of signatories and State parties to international instruments relating to refugees that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General*, *Status as at 31 December 2011,* available at http://treaties.un.org/pages/ParticipationStatus.aspx.

[540] For detailed information and documents regarding this topic generally, see the website of the UNHCR at http://www.unhcr.org.

[541] For the report of the sixty-second session of the Executive Committee of the High Commissioner's Programme, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement N0.12A* (A/66/12/Add.1).

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

[543] *Ibid*., vol. 2051, p. 363.

vention relative to the Protection of Civilian Persons in Time of War, 1949,[544] 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,[545] 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, 1989,[546] the Convention on the Elimination of All Forms of Discrimination against Women, 1979,[547] and the Convention on the Rights of Persons with Disabilities, 2006.[548] 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 adopted resolution 66/77, entitled "Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories", on the recommendation of the Fourth Committee, by a recorded vote of 162 in favour, 3 abstentions and 7 against. The Assembly reaffirmed that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, was applicable to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967.

On 19 December 2011, the General Assembly, adopted resolution 66/133, entitled "Office of the United Nations High Commissioner for Refugees", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, reaffirmed the 1951 Convention relating to the Status of Refugees[549] and the 1967 Protocol thereto[550] 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 embodied; noted with satisfaction that 148 States were 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 had shown a generous approach to hosting refugees. The Assembly noted that 68 States were at the time, parties to the 1954 Convention relating to the Status of Stateless Persons,[551] that 40 States

[544] *Ibid*., vol. 75, p. 287.

[545] *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 13* (A/49/13), annex I.

[546] United Nations, *Treaty Series*, vol. 1577, p. 3.

[547] *Ibid*., vol. 1249, p. 13.

[548] *Ibid*., vol. 2515, p. 3.

[549] *Ibid*., vol. 189, p. 137.

[550] *Ibid*., vol. 606, p. 267.

[551] *Ibid*., vol. 360, p. 117.

were parties to the 1961 Convention on the Reduction of Statelessness,[552] and encouraged States that had not done so to give consideration to acceding to those instruments. The Assembly also re-emphasized that the protection of refugees, and the prevention and reduction of statelessness, were primarily the responsibility of States. The Assembly strongly condemned attacks on refugees, asylum-seekers and internally displaced persons as well as acts that posed 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 did not operate with impunity and that the perpetrators of such acts were promptly brought to justice as provided for by national laws and obligations under international law.

Also on 19 December 2011, the General Assembly adopted resolution 66/134, entitled "Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees", on the recommendation of the Third Committee, without a vote. 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 85 to 87 States.

On the same day, the General Assembly, adopted resolution 66/135, entitled "Assistance to refugees, returnees and displaced persons in Africa", on the recommendation of the Third Committee, without a vote. The Assembly, *inter alia*, recalled the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969[553] and the African Charter on Human and Peoples' Rights, 1981,[554] 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, 1969,[555] remained the foundation of the international refugee protection regime in Africa. The Assembly 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[556] to consider doing so as early as possible in order to ensure its early entry into force and implementation, which would mark a significant step towards strengthening the national and regional normative framework for the protection of, and assistance to, internally displaced persons.

[552] *Ibid*., vol. 989, p. 175.

[553] *Ibid*., vol. 1001, p. 45.

[554] *Ibid*., vol. 1520, p. 217.

[555] *Ibid*., vol. 2152, p. 179.

[556] Available from http://www.au.int (accessed on 31 December 2011).

13. International Court of Justice[557]

(*a*) Organization of the Court

At the end of 2011, the composition of the Court was as follows:

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), Xue Hanqin (China) and Joan E. Donoghue (United States of America).

On 10 November 2011, the General Assembly and the Security Council elected four Members of the Court for a term of office of nine years, beginning on 6 February 2012. Judges Hisashi Owada, Peter Tomka, and Xue Hanqin were re-elected as Members of the Court and Giorgio Gaja (Italy) was elected as a new Member of the Court to fill the seat to be vacated by Bruno Simma, whose term was scheduled to expire on 5 February 2012. On 13 December 2011, the General Assembly elected Julia Sebutinde (Uganda) as a new Member of the Court to fill the seat to be vacated by Abdul G. Koroma, whose term was scheduled to expire on 5 February 2012.

The Registrar of the Court was Mr. Philippe Couvreur; the Deputy-Registrar was 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 of the International Court of Justice to ensure the speedy dispatch of business, was composed as follows:

Members:

President: Hisashi Owada;

Vice-President: Peter Tomka;

Judges: Abdul G. Koroma, Bruno Simma and Bernardo Sepúlveda-Amor.

Substitute members:

Judges: Leonid Skotnikov and Christopher Greenwood.

[557] 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-sixth Session, Supplement No. 4* (A/66/4) (for the period 1 August 2010 to 31 July 2011) and *Official Records of the General Assembly, Sixty-sixth session, Supplement No. 4* (A/67/4) (for the period 1 August 2011 to 31 July 2012) (forthcoming at time of publication).

(*b*) Jurisdiction of the Court[558]

On 15 December 2011, Ireland deposited a Declaration recognizing the compulsory jurisdiction of the Court. As at 31 December 2011, 67 States had made such declarations, as contemplated by Article 36, paragraphs 2 and 5 of the Statute.

The Declaration of Ireland read as follows:

> "Ireland hereby declares that it recognises as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes as specified in Article 36, paragraph 2, with the exception of any legal dispute with the United Kingdom of Great Britain and Northern Ireland in regard to Northern Ireland.
>
> The present Declaration shall take effect from the date of its receipt by the Secretary-General of the United Nations.
>
> The Government of Ireland reserves the right at any time, by means of a notification addressed to Secretary-General of the United Nations and with effect from the date of such notification, either to amend or withdraw the present Declaration; or to add to, amend or withdraw the foregoing reservation or any other reservations which may subsequently be made.
>
> Dublin, 8 December 2011.
>
> [*Signed*] Eamon Gilmore, T.D.
> Tánaiste and Minister for Foreign Affairs and Trade of Ireland"

(*c*) General Assembly

On 26 October 2011, the General Assembly adopted decision 66/507, in which it took note of the report of the International Court of Justice for the period from 1 August 2010 to 31 July 2011.[559]

On 2 December 2011, the General Assembly adopted resolution 66/46, entitled "Follow-up to the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*", on the recommendation of the First Committee, by a recorded vote of 130 in favour, 23 abstentions and 26 against. The Assembly underlined once again the unanimous conclusion of the International Court of Justice that there existed an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control, and called once again upon all States immediately to fulfil that obligation by commencing multilateral negotiations leading to an early conclusion of a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination. The Assembly further requested all States to inform the Secretary-General of the efforts and measures they had taken on the implementation of that resolution and nuclear disarmament, and requested

[558] For further information regarding the acceptance of the compulsory jurisdiction of the International Court of Justice, see chapter I.4 of *Multilateral Treaties Deposited with the Secretary-General,* available on the website http://treaties.un.org/Pages/ParticipationStatus.aspx.

[559] See *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 4* (A/66/4).

the Secretary-General to apprise the General Assembly of that information at its sixty-seventh session.

14. International Law Commission[560]

(*a*) Membership of the Commission

The membership of the International Law Commission at its sixty-third session consisted of Mr. Mohammed Bello Adoke (Nigeria),[561] Mr. Ali Mohsen Fetais Al-Marri (Qatar), Mr. Lucius Caflisch (Switzerland), Mr. Enrique J. A. Candioti (Argentina), Mr. Pedro Comissário Afonso (Mozambique), Mr. Christopher John Robert Dugard (South Africa), Ms. Concepción Escobar Hernández (Spain),[562] 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), 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. 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) and Mr. Michael Wood (United Kingdom).

The term of office of the thirty-four members of the International Law Commission for the 2007–2011 quinquennium expired at the end of 2011. The election of the members of the Commission for a five-year term beginning on 1 January 2012 (until 31 December 2016) took place, by secret ballot, at the 59th meeting of the General Assembly at its sixty-sixth session, held on 17 November 2011. The thirty-four members of the International Law Commission were elected according to the pattern set up in paragraph 3 of resolution 36/39 of 18 November 1981. Thus, the allocation of seats on the Commission for the five-year term beginning on 1 January 2012 was as follows: nine nationals from African States; eight nationals from Asia-Pacific States; three nationals from Eastern European States; six nationals from Latin American and Caribbean States; and eight nationals from Western European and other States.

(*b*) Sixty-third session of the International Law Commission

The International Law Commission held the first part of its sixty-third session from 26 April to 3 June 2011, and the second part of the session from 4 July to 12 August 2011, at

[560] 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/.

[561] Elected on 17 May 2011 to fill the casual vacancy occasioned by the resignation of Mr. Bayo Ojo (Nigeria).

[562] Elected on 28 April 2011 to fill the casual vacancy occasioned by the death of Ms. Paula Escarameia (Portugal).

its seat at the United Nations Office at Geneva.[563] The Commission considered the topics entitled "Reservations to treaties", "Responsibility of international organizations", "Effects of armed conflicts on treaties", "Expulsion of aliens", "The obligation to extradite or prosecute (*aut dedere aut judicare*)", "Protection of persons in the event of disasters", "Immunity of State officials from foreign criminal jurisdiction", "Treaties over time", and "The Most-Favoured-Nation clause". The consideration by the Commission of those topics is outlined below.

As regards the topic "Reservations to treaties", the Commission had before it the seventeenth report[564] of the Special Rapporteur, Mr. Alain Pellet, addressing the question of the reservations dialogue, as well as addendum 1 to the seventeenth report,[565] which considered the issue of assistance in the resolution of disputes concerning reservations, and also contained a draft introduction to the Guide to Practice. Furthermore, the Commission had before it the comments and observations received from Governments on the provisional version of the Guide to Practice on Reservations to Treaties, adopted by the Commission at its sixty-second session in 2010.[566] The Commission established a Working Group in order to proceed with the finalization of the text of the guidelines constituting the Guide to Practice, as had been envisaged at the sixty-second session in 2010. The Commission also referred to the Working Group a draft recommendation or conclusions on the reservations dialogue, contained in the seventeenth report of the Special Rapporteur, and a draft recommendation on technical assistance and assistance in the settlement of disputes concerning reservations, contained in addendum 1 to the seventeenth report. On the basis of the recommendations of the Working Group, the Commission adopted the Guide to Practice on Reservations to Treaties which comprised an introduction, the text of the guidelines with commentaries thereto,[567] as well as an annex on the reservations dialogue. In accordance with article 23 of its Statute, the Commission recommended to the General Assembly that it take note of the Guide to Practice on Reservations to Treaties, and ensure its widest possible dissemination. The Commission also adopted a recommendation on mechanisms of assistance in relation to reservations.[568]

Concerning the topic "Responsibility of international organizations", the Commission adopted, on second reading, a set of 67 draft articles, together with commentaries thereto, on the responsibility of international organizations, and in accordance with article 23 of its Statute recommended that the General Assembly take note of the draft articles in a resolution and annex them to the resolution,[569] and consider, at a later stage, the elaboration of a convention on the basis of the draft articles. In the consideration of the topic

[563] For the report of the International Law Commission on the work at its sixty-third session, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10 and Add.1).

[564] A/CN.4/647.

[565] A/CN.4/647/Add.1.

[566] A/CN.4/639 and Add.1.

[567] A/66/10/Add.1.

[568] A/66/10, chap. IV.

[569] As discussed in subsection (d) below, the General Assembly took note of the articles on the Responsibility of international organizations in resolution 66/100 of 9 December 2011, and annexed the text of the articles to that resolution. The text of the articles, as attached to that resolution, is reproduced in the Annex to this chapter, below.

at the sixty-third session, the Commission had before it the eighth report of the Special Rapporteur,[570] Mr. Giorgio Gaja, surveying the comments made by States and international organizations on the draft articles on responsibility of international organizations adopted on first reading at the sixty-first session in 2009 and making recommendations for consideration by the Commission during the second reading. The Commission also had before it the comments and observations received from Governments[571] and international organizations[572] on the draft articles adopted on first reading.[573]

As regards the topic "Effects of armed conflicts on treaties", the Commission adopted, on second reading, a set of 18 draft articles and an annex (containing an indicative list of treaties the subject matter of which involved an implication that they continued in operation, in whole or in part, during armed conflict), together with commentaries thereto, on the effects of armed conflicts on treaties, and in accordance with article 23 of its Statute recommended to the General Assembly that it take note of the draft articles in a resolution and annex them to the resolution, and consider, at a later stage, the elaboration of a convention on the basis of the draft articles. At the sixty-third session, the Drafting Committee continued and concluded its consideration (commenced at the sixty-second session in 2010) of the second reading of the draft articles on the effects of armed conflicts on treaties, as submitted by the Special Rapporteur, Mr. Lucius Caflisch.[574]

In relation to the topic "Immunity of State officials from foreign criminal jurisdiction", the Commission considered the second[575] and third[576] reports of the Special Rapporteur, Mr. Roman A. Kolodkin. The second report reviewed and presented the substantive issues concerning and implicated by the scope of immunity of a State official from foreign criminal jurisdiction, while the third report addressed the procedural aspects, focusing, in particular on questions concerning the timing of consideration of immunity, its invocation and waiver. The debate revolved around, *inter alia*, issues relating to methodology, possible exceptions to immunity and questions of procedure.[577]

Concerning the topic "Expulsion of aliens", the Commission had before it addendum 2 to the sixth report[578] as well as the seventh report[579] of the Special Rapporteur, Mr. Maurice Kamto. The Commission also had before it comments and information received from Governments.[580] Addendum 2 to the sixth report completed the consideration of the expulsion proceedings (including the implementation of the expulsion decision, appeals against the expulsion decision, the determination of the State of destination and the protection of human rights in the transit State) and also considered the legal consequences

[570] A/CN.4/640.

[571] A/CN.4/636 and Add.1.

[572] A/CN.4/637 and Add.1.

[573] A/66/10, chap. V.

[574] *Ibid*., chap. VI.

[575] A/CN.4/631.

[576] A/CN.4/646.

[577] A/66/10, chap. VII.

[578] A/CN.4/625/Add.2.

[579] A/CN.4/642.

[580] A/CN.4/604 and A/CN.4/628 and Add.1.

of expulsion (notably the protection of the property rights and similar interests of aliens subject to expulsion, the question of the existence of a right of return in the case of unlawful expulsion, and the responsibility of the expelling State as a result of an unlawful expulsion, including the question of diplomatic protection). Following a debate in plenary, the Commission referred seven draft articles on those issues to the Drafting Committee, as well as a draft article on "Expulsion in connection with extradition" as revised by the Special Rapporteur during the sixty-second session in 2010. The seventh report provided an account of recent developments in relation to the topic and also proposed a restructured summary of the draft articles. The Commission referred the restructured summary of the draft articles to the Drafting Committee.[581]

In relation to the topic "Protection of persons in the event of disasters", the Commission had before it the fourth report of the Special Rapporteur,[582] Mr. Eduardo Valencia-Ospina, dealing with the responsibility of the affected State to seek assistance where its national response capacity was exceeded, the duty of the affected State not to arbitrarily withhold its consent to external assistance, and the right to offer assistance in the international community. Following a debate in plenary, the Commission decided to refer draft articles 10 to 12, as proposed by the Special Rapporteur, to the Drafting Committee. The Commission provisionally adopted six draft articles, together with commentaries, including draft articles 6 to 9, which it had taken note of at its sixty-second session in 2010, dealing with humanitarian principles in disaster response, human dignity, human rights and the role of the affected State, respectively, as well as draft articles 10 and 11, dealing with the duty of the affected State to seek assistance and with the question of the consent of the affected State to external assistance.[583]

Concerning the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)", the Commission considered the fourth[584] report of the Special Rapporteur, Mr. Zdzislaw Galicki, addressing the question of sources of the obligation to extradite or prosecute, focusing on treaties and custom, and concerning which three draft articles were proposed.[585]

In relation to the topic "Treaties over time", the Commission reconstituted the Study Group on Treaties over Time, which continued its work on the aspects of the topic relating to subsequent agreements and practice. The Study Group completed its consideration of the introductory report by its Chairman, Mr. Georg Nolte, on the relevant jurisprudence of the International Court of Justice and of arbitral tribunals of *ad hoc* jurisdiction, by examining the section of the report which addressed the question of possible modifications of a treaty by subsequent agreements and practice as well as the relation of subsequent agreements and practice to formal amendment procedures. The Study Group then began its consideration of the second report by its Chairman on the jurisprudence under special regimes relating to subsequent agreements and practice, by focusing on certain conclusions contained therein. In the light of the discussions, the Chairman of the Study Group reformulated the text of nine preliminary conclusions relating to a number of issues such

[581] A/66/10, chap. VIII.

[582] A/CN.4/643 and Corr.1.

[583] A/66/10, chap. IX.

[584] A/CN.4/648.

[585] A/66/10, chap. X.

as reliance by adjudicatory bodies on the general rule of treaty interpretation, different approaches to treaty interpretation, and various aspects concerning subsequent agreements and practice as a means of treaty interpretation.[586]

Regarding the topic "The Most-Favoured-Nation clause", the Commission reconstituted the Study Group on the Most-Favoured-Nation (MFN) clause, co-chaired by Mr. Donald M. McRae and Mr. A. Rohan Perera. The Study Group held a wide-ranging discussion, on the basis of the working paper on the Interpretation and Application of MFN Clauses in Investment Agreements and a framework of questions prepared to provide an overview of issues for consideration in the context of the overall work of the Study Group, while also taking into account other developments, including recent arbitral decisions. The Study Group also set out a programme of work for the future.[587]

The Commission established a Planning Group to consider its programme, procedures and working methods.[588] As a result of the work undertaken throughout the quinquennium by the Working Group on the Long-Term Programme of Work, the Commission decided to include in its long-term programme of work the following topics: "Formation and evidence of customary international law", "Protection of the atmosphere", "Provisional application of treaties", "The fair and equitable treatment standard in international investment law", and "Protection of the environment in relation to armed conflicts".[589] The Commission reconsidered its methods of work and adopted recommendations on, *inter alia*, Special Rapporteurs, Study Groups, the Drafting Committee, preparation of commentaries to draft articles, how to make the Commission's report more informative and relations between the Commission and the Sixth Committee.[590]

(*c*) Sixth Committee

The Sixth Committee considered the agenda item entitled "Report of the International Law Commission on the work of its sixty-third session" at its 18th to 28th meetings and at its 30th meeting, from 24 to 28 October, on 31 October, and on 1, 2, 4 and 11 November 2011, respectively.

At the 30th meeting, on 11 November 2011, the representative of Guatemala, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its sixty-third session".[591] At the same meeting, the Committee adopted the draft resolution without a vote. Also at the same meeting, the representative of Thailand, on behalf of the Bureau, introduced a draft resolution entitled "Effects of armed conflicts on treaties" which was adopted without a vote.[592] The representative of Thailand, on behalf of the Bureau, also introduced a draft resolution entitled "Responsi-

[586] *Ibid.,* chap. XI.

[587] *Ibid*., chap. XII.

[588] *Ibid*., chap. XIII, sect. A.

[589] *Ibid*., chap. XIII, sect. A.1.

[590] *Ibid*., chap. XIII, sect. A.2.

[591] A/C.6/66/L.26.

[592] A/C.6/66/L.21.

bility of international organizations" and orally revised it. At the same meeting, the draft resolution, as orally revised, was also adopted without a vote.[593]

(*d*) General Assembly

On 9 December 2011, the General Assembly adopted resolution 66/98, on the recommendation of the Sixth Committee, by which it took note of the report of the International Law Commission on the work of its sixty-third session.[594] The Assembly, *inter alia*, expressed its appreciation to the International Law Commission for the work accomplished at its sixty-third 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 "Immunity of State officials from foreign criminal jurisdiction"; "Expulsion of aliens"; "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". The General Assembly took note of paragraphs 365 to 369 of the report of the International Law Commission[595] and, in particular, of the inclusion of the topics "Formation and evidence of customary international law", "Protection of the atmosphere", "Provisional application of treaties", "The fair and equitable treatment standard in international investment law" and "Protection of the environment in relation to armed conflicts" in the long-term programme of work of the Commission,[596] and also took note of the respective comments made by Member States. The Assembly invited, *inter alia*, the International Law Commission to continue to give priority to, and work towards the conclusion of, the topics "Immunity of State officials from foreign criminal jurisdiction" and "The obligation to extradite or prosecute (*aut dedere aut judicare*)". The Assembly decided, *inter alia,* that the consideration of the topic of "Reservations to treaties" would be continued at the sixty-seventh session of the General Assembly.

On the same day, the General Assembly adopted resolution 66/99, entitled "Effects of armed conflicts on treaties", and resolution 66/100, entitled "Responsibility of international organizations", without a vote, on the recommendation of the Sixth Committee. The Assembly, *inter alia,* welcomed the adoption by the International Law Commission of the draft articles on the effects of armed conflicts on treaties and the draft articles on the responsibility of international organizations respectively.[597] The Assembly decided to include both items in the provisional agenda of its sixty-ninth session, with a view to examining, *inter alia,* the question of the form that could be given to both sets of articles.

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[593] A/C.6/66/L.22.

[594] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10).

[595] *Ibid*.

[596] *Ibid*., chap. XIII, para. 365.

[597] The text of the articles on the Responsibility of international organizations, as attached to resolution 66/100 of 9 December 2011, is reproduced in the Annex to this chapter, below.

15. United Nations Commission on International Trade Law[598]

(*a*) Forty-fourth session of the Commission

The United Nations Commission on International Trade Law (UNCITRAL) held its forty-fourth session in Vienna from 27 June to 8 July 2011 and adopted its report on 8 July 2011.[599]

At the session, the Commission finalized and adopted the UNCITRAL Model Law on Public Procurement.[600] The Commission also entrusted the Secretariat and Working Group I (Procurement) with the preparation of a Guide to Enactment to the revised Model Law.[601] The Commission agreed that coordination among procurement reform agencies and other mechanisms to promote effective implementation and uniform interpretation of the Model Law should be considered.[602] In addition, the Commission requested the Secretariat to prepare a study on possible future work of UNCITRAL in the area of public-private partnerships and privately financed infrastructure projects for consideration at a future session.[603]

The Commission also finalized and adopted the "UNCITRAL Model Law on Cross-Border Insolvency: the judicial perspective."[604] In addition, the Commission heard presentations on work done by the World Bank with regard to insolvency, and on the Ninth Multinational Judicial Colloquium, organized jointly by UNCITRAL, International Association of Restructuring, Insolvency and Bankruptcy Professionals (INSOL International) and the World Bank, and requested the Secretariat to continue its cooperation with those organizations.[605]

The Commission considered reports on the work of the fifty-third and fifty-fourth sessions of its Working Group II (Arbitration and Conciliation).[606] With regard to the Working Group's work on a legal standard on transparency in treaty-based investor-State arbitration, the Commission agreed that the questions of (a) applicability of the legal standard on transparency to existing investment treaties and (b) possible intervention in the arbitration by a non-disputing State party to the investment treaty were part of the Working Group's mandate.[607] The Commission also noted that the Secretariat should work as a matter of priority on the preparation of recommendations on the use of the UNCITRAL Arbitration Rules, as revised in 2010, and on revising the 1996 UNCITRAL Notes on Organizing Arbitral Proceedings.[608]

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[598] For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 4.

[599] *Ibid*., paras. 1 and 12.

[600] *Ibid*., para. 192.

[601] *Ibid*., paras. 181–184.

[602] *Ibid*., para. 189.

[603] *Ibid*., para. 191.

[604] *Ibid*., para. 198.

[605] *Ibid*., paras. 220–221.

[606] *Ibid*., para. 199.

[607] *Ibid*., paras. 200–202.

[608] *Ibid*., para. 207.

The Commission decided that Working Group III (Online Dispute Resolution) should, while continuing its work relating to cross-border electronic transactions, including business-to-business, business-to-consumer transactions and potentially consumer-to-consumer transactions, (a) be mindful of the need not to displace consumer protection legislation, and (b) consider specifically the impact of its deliberations on consumer protection.[609]

The Commission re-convened Working Group IV (Electronic Commerce) to undertake work in the field of electronic transferable records.[610] The Commission agreed that extension of the Working Group's mandate to other topics would be considered at a future session.[611]

The Commission also considered reports on the work of the eighteenth and nineteenth sessions of Working Group VI (Security Interests).[612] The Commission requested the Working Group to try to complete its work on a text on the implementation of a registry of notices with respect to security rights in movable assets for final approval and adoption at the Commission's forty-fifth session, in 2012.[613] The Commission requested the Secretariat to cooperate with the World Bank and outside experts in the preparation of a joint set of principles on effective secured transactions regimes.[614] The Commission also requested the Secretariat to cooperate with the European Commission to ensure a coordinated approach to the question of third-party effects of assignments of receivables, taking into account the approach followed in the United Nations Convention on the Assignment of Receivables in International Trade, 2001[615] and the UNCITRAL Legislative Guide on Secured Transactions.[616] Finally, the Commission welcomed a paper prepared jointly by the Secretariat, the Permanent Bureau of the Hague Conference and the UNIDROIT Secretariat, entitled "Comparison and analysis of major features of international instruments relating to secured transactions" (A/CN.9/720).[617] The Commission requested that the text be disseminated as a United Nations sales publication with recognition of the contribution of all three organizations.[618]

With regards to possible future work, the Commission agreed to include microfinance as an item of future work for UNCITRAL and to further consider that matter at its forty-fifth session.[619] It requested the Secretariat to circulate to States a questionnaire regarding their experience with the establishment of legislative and regulatory frameworks

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[609] *Ibid*., para. 218.

[610] *Ibid*., para. 238.

[611] *Ibid*., para. 239.

[612] *Ibid*., para. 223.

[613] *Ibid*., para. 226.

[614] *Ibid*., para. 228.

[615] *Ibid*., para. 229. See General Assembly resolution 56/81, annex.

[616] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 229–231. For the text of the *UNCITRAL Legislative Guide on Secured Transactions*, see United Nations publication, Sales No. E.05.V.10.

[617] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 280.

[618] *Ibid*., para. 283.

[619] *Ibid*., para. 246.

for microfinance.[620] It also agreed that the Secretariat should, resources permitting, undertake research on certain specific microfinance topics for later consideration by the Commission.[621]

With regard to texts of other organizations, the Commission agreed to recommend the use of the 2010 revision of the International Chamber of Commerce Uniform Rules for Demand Guarantees (URDG 758), taking note of the significant revisions made and their usefulness in facilitating international trade.[622]

The Commission continued consideration of its technical assistance to law reform activities.[623] In particular, it approved the establishment of an UNCITRAL Regional Centre for Asia and the Pacific in the Republic of Korea and expressed its gratitude to the Government of the Republic of Korea for its generous contribution to that pilot project.[624]

The Commission also continued consideration of promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts,[625] status and promotion of UNCITRAL texts,[626] measures aimed at coordination and cooperation with other organizations related to the harmonization and unification of international trade law,[627] reports of other international organizations,[628] and the role of UNCITRAL in promoting the rule of law at the national and international levels.[629] Finally, the Commission took note of relevant General Assembly resolutions.[630]

(*b*) General Assembly

On 9 December 2011, the General Assembly adopted resolution 66/94 on the report of the Commission on the work of its forty-fourth session, resolution 65/95 on the UNCITRAL Model Law on Public Procurement, and resolution 65/96 on the "UNCITRAL Model Law on Cross-Border Insolvency: the judicial perspective", without a vote, on the recommendation of the Sixth Committee.[631]

16. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly

During the sixty-sixth session of the General Assembly, the Sixth Committee, in addition to the topics concerning the International Law Commission and the United Nations

[620] *Ibid.*

[621] *Ibid.*

[622] *Ibid.*, para. 249.

[623] *Ibid.*, paras. 253–261.

[624] *Ibid.*, para. 269.

[625] *Ibid.*, paras. 271–274.

[626] *Ibid.*, paras. 275–276.

[627] *Ibid.*, paras. 277–283.

[628] *Ibid.*, paras. 284–287.

[629] *Ibid.*, paras. 299–320.

[630] *Ibid.*, para. 327.

[631] Report of the Sixth Committee (A/66/471).

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 2011.[632] The resolutions of the General Assembly described in this section were all adopted during the sixty-sixth session, on 9 December 2011, on the recommendation of the Sixth Committee.[633]

(*a*) Nationality of natural persons in relation to the succession of States

At its fifty-fourth session, in 1999, the General Assembly, under the item entitled "Report of the International Law Commission on the work of its fifty-first session", considered chapter IV of the report of the Commission,[634] which contained the final draft articles on nationality of natural persons in relation to the succession of States. The Assembly decided to include in the provisional agenda of its fifty-fifth session an item entitled "Nationality of natural persons in relation to succession of States", with a view to the consideration of the draft articles and their adoption as a declaration at that session; and invited Governments to submit comments and observations on the question of a convention on the topic, with a view to the Assembly considering the elaboration of such a convention at a future session.[635]

The General Assembly considered the item at its fifty-fifth and fifty-ninth sessions.[636] At its sixty-third session, in 2008, the General Assembly reiterated its invitation to Governments to take into account, as appropriate, the provisions of the articles contained in the annex to resolution 55/153, in dealing with issues of nationality of natural persons in relation to the succession of States; encouraged States to consider, as appropriate, at the regional or subregional levels, the elaboration of legal instruments regulating questions of nationality of natural persons in relation to the succession of States, with a view, in particular, to preventing the occurrence of statelessness as a result of a succession of States; and invited Governments to submit comments concerning the advisability of elaborating a legal instrument on the question of nationality of natural persons in relation to the succession of States, including the avoidance of statelessness as a result of a succession of States; and decided to include the item in the provisional agenda of its sixty-sixth session, in 2011, with the aim of examining the subject, including the question of the form that might be given to the draft articles.[637]

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[632] 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/66/66_session.shtml.

[633] 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.

[634] A/54/10 and Corr.1 and 2.

[635] General Assembly resolution 54/112 of 9 December 1999.

[636] General Assembly resolutions 55/153 of 12 December 2000 and 59/34 of 2 December 2004.

[637] General Assembly resolution 63/118 of 11 December 2008.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 15th and 29th meetings, on 17 October and on 9 November 2011. For its consideration of the item, the Committee had before it a note by the Secretariat containing comments of Governments regarding the nationality of natural persons in relation to the succession of States,[638] as well as previous notes by the Secretariat also containing comments of Governments on the topic.[639]

In their general comments, delegations expressed appreciation for the draft articles on "Nationality of natural persons in relation to the succession of States", adopted by the International Law Commission in 1999. They emphasized the important achievement of the draft articles in setting out a legal regime aimed at preventing statelessness as a result of State succession. The particular significance of stipulating that the "right to nationality" for every individual was a fundamental human right was noted and the principle of non-discrimination with regard to nationality issues in the context of State succession was emphasized.

Some delegations expressed concern with respect to the provisions on dual and multiple nationality, and underlined that the practice of "forum shopping" for citizenship should not be encouraged. Regarding draft article 14 (habitual residence), the view was expressed that it had fallen outside the scope of the draft articles by attempting to address the law governing resident aliens. It was proposed that the terms "effective link", "appropriate connection" and "appropriate legal connection" be clarified.

Three options were mentioned with regard to the final form of the draft articles. The first was to leave the draft articles as an annex to General Assembly resolution 55/153. The second option, which had been recommended by the International Law Commission and which was supported by several delegations, was the adoption of a declaration by the General Assembly enunciating the principles and rules embodied in the draft articles. The third option, supported by some delegations, was the adoption of a binding instrument on the basis of the draft articles. A two-step approach whereby a non-binding instrument providing guidance to States could be formulated at present, while the elaboration of a legally binding instrument could be undertaken at a later stage was also proposed.

At the 29th meeting, on 9 November 2011, the representative of the Czech Republic, on behalf of the Bureau, introduced a draft resolution entitled "Nationality of natural persons in relation to the succession of States".[640] At the same meeting, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

In resolution 66/92, the General Assembly reiterated its invitation to Governments to take into account, as appropriate, the provisions of the articles contained in the annex to resolution 55/153, in dealing with issues of nationality of natural persons in relation to the succession of States, and emphasized the value of the articles in providing guidance to the

[638] A/66/178 and Add.1.

[639] A/63/113, A/59/180 and Add.1 and 2.

[640] A/C.6/66/L.18.

States dealing with issues of nationality of natural persons in relation to the succession of States, in particular concerning the avoidance of statelessness.

(*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.[641]

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,[642] 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.[643] 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.[644] The General Assembly further considered the item at its sixty-second to sixty-sixth sessions, and decided to consider it again at its sixty-seventh session, in 2012, also in the framework of a working group of the Sixth Committee.[645]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 9th, 27th and 29th meetings, on 7 October and on 2 and 9 November 2011. 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.[646]

In their general comments, most 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 was consistent with the United Nations Charter and preserved

[641] General Assembly resolution 2006 (XIX) of 18 February 1965.

[642] A/60/980.

[643] General Assembly decision 61/503 A of 13 September 2006.

[644] 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. See website of the *Ad Hoc* Committee at http://www.un.org/law/criminalaccountability/index.html.

[645] See General Assembly resolutions 62/63 of 6 December 2007, 63/119 of 11 December 2008, 64/110 of 16 December 2009, 65/20 of 6 December 2010, and 66/93 of 9 December 2011, respectively.

[646] A/66/174 and Add.1.

the image, credibility, impartiality and integrity of the Organization. In this regard, they reiterated their support for the zero tolerance policy of the United Nations, particularly in respect of sexual exploitation and abuse. Concern was also expressed that, despite the attention drawn to the subject in recent years, there were continuing allegations that undermined the work, image and credibility of the United Nations. The need for the observance of the rule of law in the implementation of the Organization's zero tolerance policy was also underlined.

Concerning the establishment of criminal jurisdiction over serious crimes committed by United Nations officials and experts on mission, most delegations noted that, although there had been progress on the matter, more needed to be done to ensure criminal accountability. Some delegations encouraged States to take the necessary steps to prosecute their nationals for any offence committed while on mission, if necessary by adapting their national legislation to include the active personality principle.

Delegations generally welcomed the recent referrals by the Organization of cases of alleged criminal conduct to the State of nationality of the official or expert on mission concerned, for investigation and possible prosecution and urged States to report back to the United Nations. In particular, several delegations called upon States to report on efforts taken to investigate and, where appropriate, prosecute their nationals for committing crimes of a serious nature while serving as United Nations officials or experts on mission. One delegation regretted that few responses had been received from the States concerned on how credible allegations had been handled by their domestic authorities.

Most delegations emphasized the importance of strengthening cooperation among States, as well between States and the United Nations, particularly with respect to extradition and mutual assistance in matters such as investigations, exchange of information, collection of evidence, execution of sentences and forfeiture of property identified as unlawfully acquired. Some delegations observed that immunities should be waived if they would impede the course of justice, and the suggestion was made that the criteria for waiver of immunities be further developed.

Highlighting the significance of preventive approaches, most delegations commended the Organization's efforts in the pre-deployment and in-mission training of peacekeeping personnel.

The need to address the concerns of victims was generally stressed by delegations. In this regard, delegations recalled the adoption of the United Nations Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by the United Nations Staff and related personnel.[647] The Secretary-General was invited to continue his efforts to ensure protection against possible retaliation for United Nations officials who report misconduct by other United Nations officials or experts on mission. Furthermore, the importance of providing adequate remedies to United Nations personnel against whom unfounded allegations have been made was stressed.

On the reporting obligations of the Secretary-General under the relevant General Assembly resolutions, most delegations welcomed the latest report of the Secretary-General,[648] which included, *inter alia*, relevant information provided by Governments on

[647] General Assembly resolution 62/214 of 21 December 2007.

[648] A/66/174 and Add.1.

jurisdictional issues as well as information on cases that had been referred by the Organization to the State of nationality of the alleged perpetrators. Delegations stressed the need for additional information from the Secretariat on existing reporting and tracking mechanisms, criteria for categorizing serious misconduct and statistics about substantiated allegations, including an estimate of possibly unreported cases. The view was also expressed that the Secretary-General's reporting system should be improved by providing more detailed information on each case referred to the State of nationality of an alleged offender.

Regarding future follow-up action, most delegations looked forward to further discussion of the report of the Group of Legal Experts[649] at the sixty-seventh session of the General Assembly, in 2012. Delegations called for the full implementation of the resolutions adopted so far by the General Assembly on the agenda item. Different views were expressed concerning the possible elaboration of a convention to ensure the criminal accountability of United Nations officials and experts on mission. Several delegations expressed support for such a convention, with the suggestion that it should also cover military personnel. Some delegations considered that it was still premature to discuss a draft convention, while other delegations believed that such a step would require careful consideration. One delegation was of the opinion that a convention was not needed, since the problem could be effectively addressed through the adoption of appropriate domestic legislation. According to another delegation, it was doubtful whether a convention would be the most efficient and practical way of addressing the issues at stake.

At the 27th meeting, on 2 November 2011, the representative of Greece introduced, on behalf of the Bureau, a draft resolution entitled "Criminal accountability of United Nations officials and experts on mission".[650] At the 29th meeting, on 9 November 2011, the Committee adopted the draft resolution without a vote.

General Assembly

In resolution 66/93, the General Assembly strongly urged States to take all appropriate measures to ensure that crimes by United Nations officials and experts on mission did not go unpunished and that the perpetrators of such crimes were 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 had not yet done so jurisdiction, particularly over crimes of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, at least where the conduct as defined in the law of the State establishing jurisdiction also constituted 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 were 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

[649] A/60/980.

[650] A/C.6/66/L.16.

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 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.

(*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,[651] 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. At its sixty-fourth session, the Assembly decided to consider the item on an annual basis again.[652]

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 14th and 30th meetings, on 14 October and on 11 November 2011. For its consideration of the item, the Committee had before it the report of the Secretary-General.[653]

Delegations welcomed the report of the Secretary-General and emphasized the importance of the Programme of Assistance in the promotion of a better knowledge of international law as a means of strengthening international peace and security and promoting friendly relations among States. Some delegations emphasized that the Programme was a core activity of the United Nations that should be supported.

Appreciation was expressed for the efforts of the Codification Division in strengthening and revitalizing the activities under the Programme of Assistance in order to meet the

[651] General Assembly resolution 2099 (XX) of 20 December 1965. For further information on the Programme of Assistance, see http://www.un.org/law/programmeofassistance.

[652] General Assembly resolution 64/113 of 16 December 2009.

[653] A/66/505.

increasing demand for international law training and dissemination in developing countries as well as developed countries. Delegations emphasised the importance of teaching international law for the observance of the principles and purposes of the Charter of the United Nations.

With regard to publications, several delegations appreciated the efforts of the Codification Division with respect to its desktop publishing programme and on-line publications. Whereas the view was expressed welcoming electronic publications to increase dissemination, the continued publication and distribution of hard copies, in particular to developing countries where access to Internet resources was scarce, was also stressed. Delegations also expressed appreciation for the publications prepared by the Division of Ocean Affairs and the Law of the Sea as well as the Treaty Section.

The Codification Division was commended for the creation and maintenance of 21 highly-valuable websites which were remarkably user-friendly.

Many delegations emphasized the importance of the International Law Fellowship Programme for providing international law training for lawyers from developing countries. They 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 concern the 6 per cent reduction from final appropriation of funds allocated for the International Law Fellowship Programme for the biennium.

Several delegations emphasized the importance of the regional courses in international law and commended the efforts of the Codification Division to revitalize this activity in order to organize them on a regular basis. Delegations noted with appreciation that for the first time in 10 years a course in international law was held in Africa in Addis Ababa in 2011 and that another one was planned in 2012. In this context, concern was expressed that it might not have been possible to organize a second course in 2012 if the necessary financial resources were not available. Appreciation was expressed for the offers of Ethiopia, Thailand and Mexico for hosting those regional courses. Thailand expressed its hope to become a permanent centre for United Nations regional courses in international law.

Many delegations supported the continued development of the United Nations Audiovisual Library of International Law (AVL)[654] as a useful tool for providing high-quality, low-cost international law training on a global scale via the Internet.

It was noted that progress on the Programme was being hindered by its dependence on voluntary sources of funding. Delegations expressed the view that it was crucial to ensure that the Programme had adequate resources to continue to meet the needs of the international community. In this context, delegations emphasized that to be sustainable, the Programme of Assistance must be adequately resourced from the regular budget. The Advisory Committee on Administrative and Budgetary Questions was encouraged to consider this matter. Moreover, delegations supported the use of revenue generated by the sales of the legal publications prepared by the Codification Division to fund its activities under the Programme of Assistance.

At the 30th meeting, on 11 November 2011, the representative of the Czech Republic, on behalf of the Bureau, introduced a draft resolution entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of Interna-

[654] http://www.un.org/law/avl.

tional Law"[655] and orally revised it. At the same meeting the Sixth Committee adopted the draft resolution, as orally revised, without a vote.

(ii) *General Assembly*

In resolution 66/97, adopted without a vote, the General Assembly, reaffirming that the Programme of Assistance constituted a core activity of the United Nations, approved the guidelines and recommendations contained in section III of the report of the Secretary-General,[656] in particular those designed to strengthen and revitalize the United Nations Programme of Assistance in the Teaching, Study, dissemination and Wider Appreciation of International Law in response to the increasing demand for international law training and dissemination activities. The Assembly authorized, *inter alia*, the Secretary-General to continue and further develop the United Nations Audiovisual Library of International Law as a major contribution to the teaching and dissemination of international law around the world.

(*d*) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

(i) *Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization*[657]

The item entitled "Need to consider suggestions regarding the review of the Charter of the United Nations" was included in the agenda of the twenty-fourth session of the General Assembly, in 1969, at the request of Colombia.[658]

At its twenty-ninth session, in 1974, the General Assembly decided to establish an *Ad Hoc* Committee on the Charter of the United Nations to consider any specific proposals that Governments might make with a view to enhancing the ability of the United Nations to achieve its purposes, as well as other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter.[659]

Meanwhile, another item, entitled "Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of cooperation among all nations and the promotion of the rules of international law in relations between States", was included in the agenda of the twenty-seventh session of the General Assembly, at the request of Romania.[660]

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[655] A/C.6/66/L.15.

[656] A/66/505.

[657] For more information, see the website of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, available from http://www.un.org/law/chartercomm/.

[658] A/7659.

[659] General Assembly resolution 3349 (XXIX) of 17 December 1974.

[660] A/8792.

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.[661] Since its thirtieth session, the General Assembly has reconvened the Special Committee every year.

The Special Committee met at United Nations Headquarters from 28 February to 4 March and from 7 to 9 March 2011. The issues considered by the Special Committee during its 2011 session in relation to the maintenance of international peace and security were: Report by the Secretary-General entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions";[662] the 1998 report on the matter containing a summary of the deliberations and main findings of the *Ad Hoc* expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162;[663] a revised working paper submitted by the Libyan Arab Jamahiriya at the 2002 session on the strengthening of certain principles concerning the impact and application of sanctions;[664] a further revised working paper,[665] introduced by Cuba during the 2009 session, of the proposal submitted by the same delegation at the 1997 session entitled "Strengthening of the role of the Organization and enhancing its effectiveness";[666] a revised proposal submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security;[667] a revised working paper submitted by Belarus and the Russian Federation at the 2005 session containing a revised version of a General Assembly draft resolution;[668] and a revised working paper submitted by the Bolivarian Republic of Venezuela entitled "Open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs".[669]

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[661] General Assembly resolution 3499 (XXX) of 15 December 1975.

[662] A/65/217.

[663] A/53/312.

[664] A/AC.182/L.110/Rev.1; see A/57/33, para. 89. The working paper constituted a revision of the proposal submitted by the Libyan Arab Jamahiriya during the Committee's 2001 session (A/AC.182/L.110 and Corr.1; see A/56/33, para. 116).

[665] A/AC.182/L.93/Rev.1.

[666] See A/52/33 and Corr.1, para. 58. An addendum to the proposal was submitted at the 1998 session (see A/53/33, para. 84).

[667] See A/53/33, para. 98.

[668] See A/60/33, para. 56. During the Committee's 1999 session, Belarus and the Russian Federation submitted a working paper containing a draft General Assembly resolution (A/AC.182/L.104) in which it was recommended that an advisory opinion be requested from the International Court of Justice as to 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 to self-defence. At the same session, following discussions, the sponsors submitted a revised version of the draft resolution for future consideration (A/AC.182/L.104/Rev.1; see A/54/33, paras. 89–101). A further revised version was submitted at the 2001 session (A/AC.182/L.104/Rev.2; see A/56/33, para. 178).

[669] A/AC.182/L.130, which superseded the proposal made by the Bolivarian Republic of Venezuela at the 2009 session, see A/65/33, annex.

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 7th, 8th, 27th and 29th meetings, on 6 October and on 2 and 9 November 2011. For its consideration of the item, the Committee had before it the following documents: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization;[670] Report of the Secretary-General on the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council;[671] and Report of the Secretary-General on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions.[672]

At the 7th meeting, on 6 October, the Vice-Chairman of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization introduced the report of the Special Committee.[673] 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.

In the context of the maintenance of international peace and security, concern was expressed by some delegations with regard to sanctions. The view was expressed that sanctions should be considered as a last resort, imposed only with the existence of a threat to international peace and security or act of aggression, in accordance with the Charter of the United Nations. It was noted that the objectives of sanctions regimes should be clearly defined, based on tenable legal grounds, imposed for a specified time frame, with the conditions on which the sanctions were imposed clearly defined and subject to periodic review. The Security Council was called upon to pay greater attention to the humanitarian effects of sanctions. Delegations noted the importance of considering the issue of compensation. It was pointed out that it would be inappropriate for the Special Committee to devise norms concerning the design and implementation of sanctions. The shift of the Security Council to targeted sanctions was welcomed by some delegations.

With regard to the implementation of the provisions of the Charter of the United Nations relating to assistance to third States affected by the application of sanctions under Chapter VII, delegations urged the Special Committee to continue to analyze the topic on a priority basis. It was noted that the sanctions committee established pursuant to resolution 1970 (2011) concerning the Libyan Arab Jamahiriya had answered requests for guidance concerning the scope and implementation of the assets freeze and that the Committee's advice was required on how to minimize the negative effect of sanctions on third States. Substantive and procedural safeguards adopted by the Security Council to mitigate the adverse effects of sanctions on third States were welcomed.

With respect to the Cuban proposal on the strengthening of the role of the Organization and enhancing its effectiveness, Cuba indicated that it planned to present a revision of the proposal which had been adopted by the working group but not by the plenary. Several

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[670] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 33* (A/66/33).

[671] A/66/201.

[672] A/66/213.

[673] For the relevant summary records of the Sixth Committee, see A/C.6/66/SR.7.

delegations expressed interest in the proposal submitted by the Bolivarian Republic of Venezuela to establish an open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs. A delegation was not in favour of considering the proposal.

Some delegations emphasized the importance of the peaceful settlement of disputes, and reiterated the view that the Special Committee should keep the item on its agenda.

It was pointed out that the proposal submitted by Belarus and the Russian Federation to request an advisory opinion from the ICJ 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-defense, remained on the agenda of the Special Committee. The view was expressed that such an opinion would help clarify the legal principles governing the use of force under the Charter of the United Nations. A delegation was not in favour of this proposal.

Many delegations welcomed the progress made by the Secretariat in the preparation of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, in particular the efforts undertaken by the Secretariat in order to reduce the backlog of those publications and make them available on the Internet. It was observed that the *Repertory* and the *Repertoire* contributed to the institutional memory of the Organization and were important research tools. While some delegations called on the Secretariat to intensify its efforts aimed at the preparation of Volume III of the *Repertory*, other delegations welcomed the significant progress in its preparation.

On the issue of the identification of new subjects, several delegations welcomed the proposal of Ghana for the inclusion of a new subject on principles and practical measures/mechanisms for strengthening and ensuring more effective cooperation between the United Nations and regional organizations on matters relating to international peace and security in areas of conflict prevention and resolution and post-conflict peacebuilding and peacekeeping. A delegation was not in favour of that proposal. It was recommended that long standing issues be disposed of before new subjects were considered. The view was expressed that many of the proposals had already been taken up and addressed elsewhere in the United Nations and that new proposals should be practical, non-political, and not duplicate efforts elsewhere in the United Nations system.

Delegations called for the improvement of the working methods of the Special Committee and some delegations supported biennial meetings and/or shortened sessions.

At the 27th meeting, on 2 November 2011, 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".[674] At the 29th meeting, on 9 November 2011, the Committee adopted the draft resolution without a vote.

(iii) *General Assembly*

In its resolution 66/101, adopted without a vote, entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the

[674] A/C.6/66/L.17.

Organization", the General Assembly took note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization,[675] and requested the Special Committee, *inter alia*, at its session in 2012, in accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995, to continue to consider, on a priority basis and in an appropriate substantive manner and framework, the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter based on all of the related reports of the Secretary-General[676] and the proposals submitted on the question.

(*e*) 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.[677] The General Assembly considered the item from its sixty-first to its sixty-fifth sessions.[678]

Sixth Committee

The Sixth Committee considered the item at its 5th, 6th, 7th and 30th meetings, on 5 and 6 October and 11 November 2011. For its consideration of the item, the Committee had before it the report of the Secretary-General on strengthening and coordinating United Nations rule of law activities.[679]

In their general observations, many delegations emphasized that the rule of law at the national and international levels was an essential condition for peaceful cooperation and coexistence among States, and critical to effectively addressing global challenges on the basis of the purposes and principles of the Charter and international law. The intrinsic relationship between the rule of law at the national and international levels was referred to by many delegations. Some delegations referred to the link between development and the rule of law. It was emphasized that the promotion of human rights and democratic values were at the core of rule of law at the national and international levels. It was pointed out, however, that more attention to the rule of law at the international level was warranted. Some delegations highlighted the importance of avoiding unauthorized intervention in States' internal affairs or use of force.

Delegations highlighted the central role of the United Nations in promoting the rule of law at the national and international levels and expressed their appreciation for the work carried out by the Rule of Law Coordination and Resource Group, supported by

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[675] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 33* (A/66/33).

[676] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303, A/57/165 and Add.1, A/58/346, A/59/334, A/60/320, A/61/304, A/62/206 and Corr.1, A/63/224, A/64/225, A/65/217 and A/66/213.

[677] 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).

[678] See General Assembly resolutions 61/39 of 4 December 2006, 62/70 of 6 December 2007, 63/128 of 11 December 2008, 64/116 of 16 December 2009 and 65/32 of 6 December 2010, respectively.

[679] A/66/133.

the Rule of Law Unit, for their efforts in contributing to the advancement of the rule of law and coordinating United Nations rule of law activities. The issuance of a guidance note by the Secretary-General in May 2011 on the United Nations approach to rule of law assistance at the international level was welcomed. An evaluation of the work of the Rule of Law Coordination and Resource Group and the Rule of Law Unit was called for with regard to their core task of coordinating rule of law activities. A more regular dissemination of information on its activities among the United Nations Member States was also called for. The critical importance of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law was noted in this regard and appreciation was expressed for the United Nations Audiovisual Library of International Law.[680]

Delegations highlighted the significance of the peaceful settlement of disputes under international law and the important role played by the International Court of Justice, the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and hybrid tribunals.

With regard to the subtopic "The rule of law and transitional justice in conflict and post conflict situations", delegations commented on the issues of combating impunity and strengthening criminal justice, the role and future of national and international transitional justice and accountability mechanisms as well as informal justice systems. The growing trend towards universal agreement on the need to combat impunity for serious crimes was noted. Delegations welcomed the recent decision of the Human Rights Council to establish a United Nations Special Rapporteur for promoting the right to truth, to justice, to reparation and the guarantee of non-recurrence in cases of gross violations of human rights and serious violations of international humanitarian law. The Secretary-General was called upon to designate a lead entity and the United Nations Office on Drugs and Crime was suggested to strengthen domestic criminal justice systems to enable them to address the most serious and complex crimes.

Several delegations shared their experiences in restoring the rule of law in conflict and post conflict situations. It was pointed out that there was no one-size-fits all approach in assisting States afflicted by conflicts to restore the rule of law in their territories.

References were made to the initiative of the President of the General Assembly in organizing the Interactive Thematic Debate on "The rule of law and global challenges", held on 11 April 2011.

Many delegations expressed support for the decision of the General Assembly to convene a high-level meeting of the Assembly on the rule of law at the national and international levels during the high-level segment of its sixty-seventh session, and expressed their willingness to participate in the deliberations to this end. The following specific suggestions were made concerning the high level meeting of the General Assembly: a "thematic round table" with the main emphasis on national and regional experience was suggested; a thematic round table on the principle of complementarity was proposed; interest was expressed in the adoption of a code of conduct that would help put an end to impunity; and a meeting on the implementation of the rule of law concept in Afghanistan, Iraq, Libya and other conflict and post-conflict societies was proposed. Support was also expressed for the

[680] See subsection (c) of this section.

Secretary-General's proposal to create an inclusive international policy forum on the rule of law. It was also noted that following the high-level meeting with concrete results, rule of law issues should remain high on the international agenda.

Delegations made reference to the application of Palestine for membership of the United Nations, linking the treatment of the application by the United Nations with the determination of the rule of law at the United Nations.

At the 30th meeting, on 11 November 2011, the representative of Liechtenstein, on behalf of the Bureau, introduced a draft resolution entitled "The rule of law at the national and international levels"[681] and orally revised it.[682] At the same meeting, the Committee adopted the draft resolution, as orally revised, without a vote.

(ii) *General Assembly*

The General Assembly, in its resolution 66/102, adopted without a vote, took note of the annual report of the Secretary-General on strengthening and coordinating United Nations rule of law activities,[683] reaffirmed the role of the General Assembly in encouraging the progressive development of international law and its codification, and reaffirmed further that States shall abide by all their obligations under international law. In addition, the Assembly reaffirmed the imperative of upholding and promoting the rule of law at the international level in accordance with the principles of the Charter.

(*f*) The scope and application of the principle of universal jurisdiction

This item entitled "The scope and application of the principle of universal jurisdiction" was included in the provisional agenda of the sixty-fourth session of the General Assembly, in 2009, at the request of the United Republic of Tanzania.[684] The Assembly considered the item at its sixty-fourth and sixty-fifth sessions.[685]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 12th, 13th, 17th and 29th meetings, on 12 and 21 October and on 9 November 2011. For its consideration of the item, the Committee had before it the reports of the Secretary-General, submitted to the sixty-fifth and sixty-sixth sessions of the General Assembly.[686]

At its 1st meeting, on 3 October 2011, the Sixth Committee established a Working Group pursuant to General Assembly resolution 65/33 "to undertake a thorough discussion of the scope and application of the principle of universal jurisdiction". At its 7th meeting on 6 October 2011, the Committee elected Mr. Eduardo Ulibarri (Costa Rica) as Chair-

[681] A/C.6/66/L.20.

[682] See A/66/475, para 5.

[683] A/66/133.

[684] A/63/237/Rev.1.

[685] General Assembly resolutions 64/117 of 16 December 2009 and 65/33 of 6 December 2010.

[686] A/65/181, A/66/93 and Add.1.

man of the Working Group.[687] The Working Group held three meetings, on 13, 14 and 20 October 2011. At its 17th meeting, on 21 October, the Committee received the oral report of Chairman of the Working Group.[688]

In their general comments, delegations took note of the report of the Secretary General and observed that they continued to follow the item with keen interest. Several delegations drew attention to their laws and practice relevant to universal jurisdiction. It was observed by one delegation that its recently amended national legislation allowed for the exercise of universal jurisdiction on crimes in international instruments. The International Committee of the Red Cross (ICRC) reiterated its appeal to all States to ensure that they had a proper national legal framework in place, in particular stressing the need to close the impunity gap for war crimes, including grave breaches under the Geneva Conventions.[689]

Although it was recognized that the comments of States expressed in the report of the Secretary-General revealed a diversity of views, it was generally acknowledged that universal jurisdiction was an important principle, whose validity was beyond doubt. It was noted that it provided a tool to prosecute the perpetrators of certain serious crimes under international treaties. It was further noted that it was an institution of international law of an exceptional character for the exercise of criminal jurisdiction serving to fight impunity and strengthen justice. It was observed that universal jurisdiction was a well-established principle of customary and conventional international law. It was noted that African States recognized that universal jurisdiction was a principle of international law whose purpose was to ensure that individuals who committed grave offences did not do so with impunity and were brought to justice. One delegation acknowledged that it understood the importance of universal jurisdiction in combating impunity.

However, it was also appreciated that there was controversy surrounding the principle. A few delegations noted that universal jurisdiction was a complex issue involving legal, political and diplomatic aspects. Indeed, delegations expressed different views on the scope of universal jurisdiction and its application, highlighting that this was where most concerns existed. It was noted that the principle was viewed by some as incipient, lacking clarity in its scope and application.

Concerning scope, delegations highlighted the importance of agreeing on a definition of universal jurisdiction and the need to distinguish it from other related concepts, such as international criminal jurisdiction, the obligation to extradite or prosecute (*aut dedere aut judicare*), as well as other related principles and rules of international law. It was acknowledged that universal jurisdiction contributed to the implementation of complementarity as enshrined in the Rome Statute of the International Criminal Court;[690] it was nevertheless pointed out that it was conceptually different from the exercise of international criminal jurisdiction. Some delegations noted that universal jurisdiction was linked to the obligation to extradite or prosecute (*aut dedere aut judicare*), while it was nevertheless pointed out that universal jurisdiction was conceptually different from that obligation. Other delegations noted that the obligation to extradite or prosecute was generally considered to

[687] For the relevant summary records of the Sixth Committee, see A/C.6/66/SR. 1 and 7.

[688] A/C.6/66/SR. 17.

[689] United Nations, *Treaty Series*, vol. 75, pp. 31, 85, 135 and 287.

[690] *Ibid*., vol. 2187, p. 3.

derive from a treaty obligation, whereas universal jurisdiction was perceived more as an entitlement than an obligation.

Concerning the related question of crimes covered by the principle, views were divergent, with delegations noting that the Working Group should also focus on this aspect. One delegation pointed to the fact that the gravity of the crimes was the common denominator for crimes over which the principle should be exercised, with another delegation mentioning genocide, crimes against humanity, war crimes and torture in that category. It was noted that, except for the Geneva Conventions of 1949, the Convention on the prevention and punishment of the crime of genocide, 1948[691] the Convention against torture and other cruel, inhuman or degrading treatment or punishment, 1984,[692] and the United Nations Convention on the Law of the Sea, 1982,[693] it was misleading to assert that universal jurisdiction was established by treaty without express language therein. Some delegations noted that there was no consensus on the scope of crimes to be covered by the principle beyond piracy. Other delegations cautioned against an unwarranted expansion of the crimes covered by universal jurisdiction. The ICRC noted that universal jurisdiction was rooted in international humanitarian law (IHL). The 1949 Geneva Conventions provided for the mandatory universal jurisdiction over grave beaches, as well as crimes other than grave breaches.

As regards the application of universal jurisdiction, some delegations emphasized the need for its judicious and responsible application, stressing the need to avoid the abuse of the principle in practice, including its selective use as a political tool and its arbitrary or unilateral invocation. Some delegations underlined the need for specific safeguards and conditions for the assertion of universal jurisdiction to prevent any abuse. Delegations underscored that universal jurisdiction should always be exercised in good faith and with due regard to other principles of international law. Several delegations stressed the importance of respecting principles of international law enshrined in the Charter of the United Nations, including sovereign equality of States, as well as their political independence and non-interference in the internal affairs of other States, with delegations noting that the violation of the immunity of State officials violated the sovereignty of States, while other delegations underlined the need for a moratorium to be imposed on all pending arrest warrants filed against African leaders.

The link between universal jurisdiction and the question of immunity of State officials, in particular heads of State and government, was particularly highlighted. The view was expressed that there was a delicate balance to be struck between the prevention of impunity and the free exercise of sovereignty by agents of the State, whereby immunity of State officials would be the exception to the applicability of jurisdiction. It was stressed that discussions on the principle should not be taken over by discussions on immunity, given in particular that the latter, which was also implicated with respect to other bases of jurisdiction, may prejudice the Committee's consideration of the topic.

Some delegations underlined the importance of conditions for the application of universal jurisdiction, with one delegation noting that prosecution for crimes under universal

[691] *Ibid*., vol. 78. p. 277.

[692] *Ibid*., vol. 1465, p. 85.

[693] *Ibid*., vol. 1833, p. 3.

jurisdiction required the consent of a governmental authority like an Attorney-General and the presence of the accused person in the territory was often required. It was also generally noted that universal jurisdiction was a jurisdictional basis of last resort usually invoked in conjunction with other bases like territoriality and nationality. The importance of the principle of legality was stressed while the relevance of international cooperation, particularly in matters of extradition and mutual assistance, was underscored.

On the future consideration of the item, delegations generally acknowledged the establishment of the Working Group of the Sixth Committee on the item. Some delegations stated that the focus of the Working Group should be on considering clear rules for the application of universal jurisdiction in order to ensure its reasonable exercise and compatibility with international law, as well as on its scope. It was suggested that the focus should be on the legal aspects of the scope and application of universal jurisdiction, with delegations indicating that the Working Group should address the question of definition as well.

Some delegations expressed guarded optimism regarding the anticipated work of the Working Group. It was noted that since last year there had not been any new information and development that were illuminating on the subject and the question was raised whether the Sixth Committee could deal with the matter speedily. A cautious approach to any attempt to elaborate a new instrument on universal jurisdiction was advocated. Given the divergence of views on the matter, doubt was expressed whether that work of national courts could be advanced by constrictions determined by international regulation. Some delegations noted that there was no need for a new regulatory mechanism for the exercise of universal jurisdiction, stating that existing mechanisms should be used to deal with potential disputes. Advocating an incremental approach, one delegation noted that it was premature at this stage to adopt uniform standards on the subject.

Apart from the Working Group, mention was also made of the International Law Commission. It was noted that the possibility of the Commission addressing the issue should not be precluded. Some delegations suggested that the matter could be referred to the Commission for a study on the status of universal jurisdiction in international law with a view of the Sixth Committee resuming its consideration at a later stage. It was proposed that the Commission be requested to study the issue bearing in mind also that the Commission's programme of work for next year would be light. The fact that the Commission had at its 2011 session given priority to related topics, namely, the "Immunity of State officials from criminal jurisdiction" and "The obligation to extradite or prosecute (*aut dedere aut judicare*)" was welcomed. Several delegations proposed that the matter should be carried forward further by the Commission in particular in the framework of work on those two topics. Other delegations noted that in view of the fundamentally juridical and technical nature of the subject, its examination should preferably have been entrusted to the Commission.

At the 29th meeting, on 9 November 2011, the representative of the Democratic Republic of the Congo, on behalf of the Bureau, introduced a draft resolution entitled "The scope and application of the principle of universal jurisdiction"[694] and orally revised

[694] A/C.6/66/L.19.

it. At the same meeting, the Committee adopted the draft resolution, as orally revised, without a vote.

(ii) *General Assembly*

In resolution 66/103, adopted without a vote, the General Assembly decided that the Sixth Committee would continue its consideration of the scope and application of universal jurisdiction, without prejudice to the consideration of the topic and related issues in other forums of the United Nations, and for that purpose decided to establish, at its sixty-seventh session, a working group of the Sixth Committee to continue to undertake a thorough discussion of the scope and application of universal jurisdiction. The General Assembly invited Member States and relevant observers, as appropriate, to submit, before 30 April 2012, 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-seventh session, a report based on such information and observations.

(*g*) The law of transboundary aquifers

At its sixty-third session, in 2008, the General Assembly, under the item entitled "Report of the International Law Commission on the work of its sixtieth session", considered chapter IV of the report of the Commission, which contained the draft articles on the law of transboundary aquifers, together with commentaries, and a recommendation that the Assembly take note of the draft articles on the law of transboundary aquifers in a resolution and annex those articles to the resolution. The General Assembly, subsequently, welcomed the conclusion of the work of the Commission on the law of transboundary aquifers and its adoption of the draft articles and a detailed commentary on the subject; took note of the draft articles, the text of which was annexed to its resolution; commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action; encouraged the States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of the draft articles; and decided to include the item in the provisional agenda of its sixty-sixth session with a view to examining, in particular, the question of the form that might be given to the draft articles.[695]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 16th and 29th meetings, on 17 October and 9 November 2011, respectively. For its consideration of the item, the Committee had before it a report of the Secretary-General containing comments and observations of Governments on the draft articles on the law of transboundary aquifers.[696]

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[695] General Assembly resolution 63/124 of 11 December 2008.

[696] A/66/116 and Add.1.

Delegations welcomed the report of the Secretary-General on the item and conveyed appreciation to the International Law Commission for the preparation of the draft articles on the law of transboundary aquifers. It was pointed out that the draft articles were the first systematic formulation of international law at the global level applicable to such aquifers and delegations recognized the important contribution to the topic made by UNESCO.

It was noted that the draft articles had achieved a fair balance between the rights and obligations of States. Attention was drawn to the "Agreement on the Guarani Aquifer" concluded between Argentina, Brazil, Paraguay and Uruguay, which took into account the principles of the draft articles. Several delegations made substantive comments on the draft articles.

As to the future form of the draft articles, many delegations believed that the elaboration of a legally binding instrument on the basis of the draft articles was premature, while not ruling out a global convention in the future. Delegations stressed the need for state practice (through bilateral and regional arrangements) to develop and that the final form of the draft articles should be considered at a later stage. It was pointed out that the purpose of the draft articles could be achieved by bilateral and regional arrangements and it was further pointed out that there was still room for improvement of the draft articles.

One delegation reaffirmed its continued belief in context-specific arrangements as opposed to a global framework treaty. Another delegation was not convinced that it would be appropriate to adopt the draft articles in the form of a convention.

The adoption of the draft articles in the form of a declaration of principles on the law of transboundary aquifers was proposed. One delegation thought it premature to endorse the draft articles as principles while another delegation stated that it did not insist on a convention and would support a declaration. The appropriateness of the draft articles as guidelines for States when concluding bilateral or regional agreements was emphasized.

The view was expressed that the draft articles should evolve into an international framework convention. Some delegations remained flexible as to the final form of the draft articles, but the need to carry out an analysis of the core purpose of the draft articles in order to decide on the form was stressed. It was also noted that the time was ripe to commence negotiations on the subject.

At the 29th meeting, on 9 November 2011, the representative of Japan, on behalf of the Bureau, introduced a draft resolution entitled "The Law of Transboundary Aquifers"[697] and orally revised it.[698] At the same meeting, the Committee adopted the draft resolution, as orally revised, without a vote.

(ii) *General Assembly*

In resolution 66/104, adopted without a vote, the Assembly further encouraged the States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of the draft articles annexed to its resolution 63/124.

[697] A/C.6/66/L.24.

[698] See A/66/477, para. 5.

(*h*) 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.[699] At that session, the Assembly decided to establish the *Ad Hoc* Committee on International Terrorism, consisting of 35 members.[700] The General Assembly considered the item biennially at its thirty-fourth to forty-eighth sessions, and annually thereafter.

At its fifty-first session, in 1996, the General Assembly established 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.[701] Through the work of the Committee, the Assembly has thus far adopted three counter-terrorism instruments.[702] The Committee continued to be engaged in discussions on the elaboration of a draft comprehensive convention on international terrorism.

At its sixty-fifth session, the General Assembly requested the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime in Vienna to continue its efforts to enhance, through its mandate, the capabilities of the United Nations in the prevention of terrorism, and recognized, in the context of the United Nations Global Counter-Terrorism Strategy and Security Council resolution 1373 (2001), its role in assisting States in becoming parties to and implementing the relevant international conventions and protocols relating to terrorism, including the most recent among them, and in strengthening international cooperation mechanisms in criminal matters related to terrorism, including through national capacity-building.[703]

(i) *Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996*[704]

At its fifteenth session, the *Ad Hoc* Committee held two plenary meetings: the 47th on 11 April and the 48th on 15 April 2011.[705] At the 47th meeting, on 11 April, the *Ad Hoc* Committee adopted its programme of work and decided to proceed with its discussions in informal consultations and informal contacts. During the informal consultations on 11 and 12 April, the Committee held a general exchange of views on the draft comprehen-

[699] A/8791 and Add.1/Corr.1.

[700] General Assembly resolution 3034 (XXVII) of 18 December 1972.

[701] General Assembly resolution 51/210 of 17 December 1996.

[702] The International Convention for the Suppression of Terrorist Bombings, 1997; the International Convention for the Suppression of the Financing of Terrorism, 1999; and the International Convention for the Suppression of Acts of Nuclear Terrorism. See United Nations, *Treaty Series*, vol. 2149, p. 256; vol. 2178, p. 197; and vol. 2445, p. 89, respectively.

[703] General Assembly resolution 65/34 of 6 December 2010.

[704] For more information see website of the *Ad Hoc* Committee established by General Assembly resolution 51/210 of 17 December 1996, available from http://www.un.org/law/terrorism/index.html.

[705] For the report of the *Ad Hoc* Committee, see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 37* (A/66/37).

sive convention on international terrorism and on the question of convening a high-level conference. Further informal consultations regarding the draft comprehensive convention were held on 12 April and informal discussions were held on 12 and 13 April.

At its 48th meeting, on 15 April, the *Ad Hoc* Committee decided to recommend that the Sixth Committee, at the sixty-sixth session of the General Assembly, establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and continue to discuss the item included in its agenda by Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations.

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 1st, 2nd, 3rd, 4th, 28th, 29th and 30th meetings, on 3 and 4 October and on 4, 9 and 11 November 2011, respectively. For its consideration of the item, the Committee had before it the following documents: Report of the *Ad Hoc* Committee established by General Assembly resolution 51/210 of 17 December 1996;[706] and Report of the Secretary-General on measures to eliminate international terrorism.[707]

At its 1st meeting, on 3 October 2011, the Sixth Committee established a Working Group to continue to carry out the mandate of the *Ad Hoc* Committee established by General Assembly resolution 51/210, as contained in resolution 65/34. At the same meeting, the Committee elected Mr. Rohan Perera (Sri Lanka) as Chairman of the Working Group. The Working Group held 4 meetings, on 17 and 19 October and on 1 November 2011. It also held informal consultations on 17 and 19 October.

At the 1st meeting of the Sixth Committee, on 3 October 2011, the Vice-Chairperson of the *Ad Hoc* Committee established by General Assembly resolution 51/210 introduced the report of the *Ad Hoc* Committee; and at the 28th meeting, on 4 November, the Committee received an oral report of the Chairman on the work of the Working Group and on the results of the informal consultations which were held during the session on 17 and 19 October.[708]

The general debate in the Sixth Committee on the item took place against the backdrop of the commemorative ceremony of the General Assembly marking the tenth anniversary of 9/11 held on 9 September 2011, the Secretary-General's Symposium on International Counter-Terrorism Cooperation, on 19 September, and the Special Meeting of the Security Council Counter-Terrorism Committee, convened on 28 September 2011. Referring to these meetings, delegations acknowledged the achievements of the international community in the past decade in countering terrorism, noting that the world was now a safer place than 10 years ago but also recognizing that more work needed to be done.

Welcoming the convening of the Symposium, it was pointed out that it highlighted the various contributions of the United Nations in the fight against terrorism in the past

[706] *Ibid*.

[707] A/66/96 and Add.1.

[708] For the relevant summary records of the Sixth Committee, see A/C.6/66/SR.1 and 28.

decade. For instance, it was stated that the United Nations efforts had led to the dramatic increase of parties to international counter-terrorism instruments.

The continuing focused work of the Security Council in countering terrorism, as well as the improvements made by the Council in the implementation of sanctions regimes, was generally welcomed. In this regard, references were made to the Security Council resolutions 1988 (2011) and 1989 (2011), splitting the Al Qaeda and Taliban sanctions regimes, greater involvement of designating States in delisting decisions, clearer time frames, and the strengthened role of the 1267 Ombudsperson.[709] The Council was nevertheless encouraged to continue to improve its working methods with regard to sanctions to ensure that its sanctions regimes were independent, impartial and that decisions were based on due process standards and the rule of law.

Some delegations also welcomed the work of the Counter Terrorism Committee and the renewal of the mandate of the Counter-Terrorism Executive Directorate (CTED).

Delegations underscored the multilateral approaches and central role of the United Nations in counter-terrorism efforts and reiterated their support for the United Nations Global Counter-Terrorism Strategy, calling in particular for its full implementation in a transparent and comprehensive manner. Reference was also made to the statement by the Secretary-General during the symposium that the Strategy would not be complete without the conclusion of the comprehensive convention on international terrorism. The institutionalization of the Counter-Terrorism Implementation Task Force (CTITF) was welcomed. The CTITF was called upon to strengthen its role in capacity-building and coordination and was encouraged to enhance its activities aimed at a balanced implementation of the four pillars of the Strategy, affording each pillar equal attention, and to do so in full cooperation with and participation of States. While welcoming the coordinating role of the United Nations, some delegations also reaffirmed the primary responsibility of States in the implementation of the Strategy. Several delegations underscored the importance of adequate funding for the CTITF and welcomed its efforts to brief member States regularly. It was further stressed that the Strategy was a living document, which needed to be regularly reviewed and updated.

The role the United Nations Office on Drugs and Crime in capacity-building was highlighted by some speakers and references were made to role of specialized agencies, including UNESCO and International Maritime Organization (IMO), in this area.

Some delegations called for streamlining the reporting obligations of States in counter-terrorism, noting that current system was burdensome particularly to small States.

More generally, delegations reaffirmed 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 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

[709] For further details on Security Council resolution 1988 (2011) and 1989 (2011), see section (2) (f) and (g), respectively, of the present chapter.

respect for human rights values. Thus, delegations underscored the need for strict observance of the Charter of the United Nations and international law, including human rights, humanitarian and refugee law, as well as the respect for the rule of law in countering terrorism.

Several delegations highlighted the importance of developing partnerships, including exchange of information, among States, civil society and the private sector in counter-terrorism, as well as with regional research centres. Some delegations welcomed the conclusion of a contribution agreement between the United Nations and Saudi Arabia for the purpose of creating a United Nations Centre for Counter-Terrorism (UNCCT) to foster international cooperation, strengthen the Organization's capacity-building efforts and help build a database of best anti-terrorism practices.[710] Reference was also made to the launching of the Global Counter-terrorism Forum (GCTF) and other initiatives, such as the Trans-Sahara Counter-terrorism Initiative (TSCTI) and the Madrid Declaration and Plan of Action. Some delegations emphasized that the UNCCT and the GCTF would reinforce, complement and contribute to the implementation of the Strategy.

Furthermore, several delegations stressed that the fight against terrorism included the need to give proper support to and protection for victims of terrorist attacks.

Several delegations 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. Attention was drawn to the need for the United Nations to work further on issues concerning countering radicalization and extremism.

A number of delegations 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. Some delegations deplored selectivity and the use of double standards in countering terrorism.

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 a party to the universal and regional counter-terrorism instruments and implementing them fully was emphasized. Several delegations commended the 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 Suppression of Unlawful Seizure of Aircraft,[711] which, by addressing new and emerging threats to civil aviation, constituted important advances in countering terrorism.

Some delegations pointed to the potential dangers posed particularly by the possible acquisition by terrorists of weapons of mass destruction and use of information and communication technologies, while also sharing their concern about the close links between terrorism and transnational organized crime, including money laundering, arms

[710] For the text of the agreement, see section 2 (1) of chapter II A above, "Treaties concerning the legal status of the United Nations".

[711] For more information about the Beijing Convention and Protocol, see http://www.icao.int/DCAS2010 and http://www.icao.int/Secretariat/Legal/Pages/TreatyCollection.aspx (accessed on 31 December 2011).

smuggling and trafficking in illicit drugs, 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 and urged United Nations action to stem the tide of these developments.

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. Also echoed was the need to eliminate sanctuaries and safe havens that harbour terrorists.

Delegations highlighted the various steps that their States had taken at the national, subregional and regional levels, to enhance their ability and capacity to counter terrorism, including the elaboration of national legislation and model laws.

On the work of the *Ad Hoc* Committee established by General Assembly resolution 51/210, delegations once more called for the early conclusion of the draft comprehensive convention on international terrorism, which would enhance and fill the lacunae in the existing legal framework and provide States with an effective tool in their counter-terrorism efforts, including by facilitating cooperation and mutual legal assistance and by providing a definition of terrorism to ensure universal criminalization. Referring to the 2005 World Summit Outcome, the Strategy, the Secretary-General's symposium and recent commemorative events, it was stressed that finalizing the draft convention should be a priority. The remaining outstanding issues could be resolved with sufficient political will and States were urged to engage in a constructive debate and to show flexibility in order to bring this process to a close, preferably during the current session. It was stressed that work on the draft convention should be guided by the principle of consensus. The view was also expressed that in case the current impasse in the negotiations continued, there was no need for the *Ad Hoc* Committee to be re-established and the Sixth Committee should consider the possibility of taking up the agenda item on a biennial basis, alternating with the biennial review of the Strategy. A proposal to link the two items on the agenda of the *Ad Hoc* Committee in order to move the process forward was also reiterated.

Some delegations reiterated their support for the proposal made by the Coordinator at the 2007 session of the *Ad Hoc* Committee and considered that it constituted a viable compromise solution. It was pointed out that a vast majority of States were ready to support the compromise proposal and that it seemed that the problems associated with it were overstated whereas the benefits of it had not fully been appreciated. It was further noted that no one had rejected the 2007 proposal and some delegations emphasized that the proposal should not be reopened. Some delegations reiterated that the draft convention should be viewed as a criminal law instrument, dealing with individual criminal responsibility; it did not lend itself to addressing State terrorism. The proposal properly respected the integrity of international humanitarian law and other relevant legal regimes, including the right to self-determination as provided for under the Charter of the United Nations. Acts of military forces of States outside an armed conflict remained under the scrutiny of international criminal law and human rights law, giving rise to similar duties to prosecute offenders. Moreover, attention was drawn to the fact that, similarly to the draft convention, international humanitarian law also held perpetrators of terrorist acts in war time accountable and provided for a similar prosecution or extradition regime.

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 the scope of the convention. 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 should build upon and enhance the existing legal framework. 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 those acts by armed forces that were not covered by, or were not in conformity with, international humanitarian law (IHL). It was pointed out that IHL related issues should be addressed in terms appropriate for that legal regime.

Some delegations reiterated their support to convene a high-level conference under the auspices of the United Nations. While preference was expressed for convening a conference once agreement has been reached on the draft comprehensive convention on international terrorism, some other delegations stressed that the convening of a conference should not be linked to the conclusion of the draft convention. In that regard, it was pointed out that the conference, *inter alia*, could assist in resolving the non-legal outstanding issues surrounding the draft convention.

At the 30th meeting, on 11 November 2011, the representative of Canada, on behalf of the Bureau, introduced a draft resolution entitled "Measures to eliminate international terrorism"[712] and orally revised it. At the same meeting, the Committee adopted the draft resolution, as orally revised, without a vote.

(iii) *General Assembly*

In resolution 66/105, adopted without a vote, the General Assembly recalled, *inter alia*, the Declaration on Measures to Eliminate International Terrorism, contained in the annex to General Assembly resolution 49/60 of 9 December 1994, and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, contained in the annex to Assembly resolution 51/210 of 17 December 1996. The Assembly reiterated its call upon all States to adopt further measures in accordance with the Charter of the United Nations and the relevant provisions of international law, including international standards of human rights, to prevent terrorism and to strengthen international cooperation in combating terrorism and, to that end, to consider in particular the implementation of the measures set out in paragraphs 3 (*a*) to (*f*) of General Assembly resolution 51/210. The Assembly reaffirmed that international cooperation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter, international law and relevant international conventions.

The Assembly recalled the adoption of the International Convention for the Suppression of Acts of Nuclear Terrorism,[713] the Amendment to the Convention on the Physical

[712] A/C.6/66/L.25.

[713] General Assembly resolution 59/290, annex.

Protection of Nuclear Material,[714] the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation[715] 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,[716] and urged all States to consider, as a matter of priority, becoming parties to those instruments.

The Assembly also urged, *inter alia*, all States that had not yet done so to consider, as a matter of priority, and in accordance with Security Council resolution 1373 (2001) and Council resolution 1566 (2004) of 8 October 2004, becoming parties to the relevant conventions and protocols as referred to in paragraph 6 of General Assembly resolution 51/210, as well as the International Convention for the Suppression of Terrorist Bombings, 1997,[717] the International Convention for the Suppression of the Financing of Terrorism, 1999,[718] the International Convention for the Suppression of Acts of Nuclear Terrorism, 2005,[719] and the Amendment to the Convention on the Physical Protection of Nuclear Material,[720] and called upon all States to enact, as appropriate, the domestic legislation necessary to implement the provisions of those conventions and protocols, to ensure that the jurisdiction of their courts enabled them to bring to trial the perpetrators of terrorist acts and to cooperate with and provide support and assistance to other States and relevant international and regional organizations to that end.

(*i*) Revitalization of the work of the General Assembly

The item entitled "Revitalization of the work of the General Assembly" was included in the provisional agenda of the sixty-sixth session of the General Assembly pursuant to Assembly resolution 58/316 of 1 July 2004. At its 2nd 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 Sixth Committee considered the item at its 30th meeting, on 11 November 2011.

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[714] Available at http://www.iaea.org/Publications/Documents/Conventions/cppnm.html (accessed on 31 December 2011).

[715] Adopted on 14 October 2005 by the Diplomatic Conference on the Revision of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) Treaties, International Maritime Organization, document LEG/CONF.15/21.

[716] Adopted on 14 October 2005 by the Diplomatic Conference on the Revision of the SUA Treaties. International Maritime Organization, document LEG/CONF.15/22.

[717] United Nations, *Treaty Series* , vol. 2149, p. 256.

[718] *Ibid*., vol. 2178, p. 197.

[719] *Ibid*., vol. 2445, p. 89.

[720] Available at http://www.iaea.org/index.html.

Delegations made several recommendations for the improvement of the working methods of the Sixth Committee, including calling for greater efforts to avoid overlaps in meetings between the Sixth Committee and those of the Plenary of the General Assembly.

At the 30th meeting, on 11 November 2011, the Chair introduced a draft decision[721] containing the provisional programme of work of the Committee for the sixty-seventh session of the General Assembly, as proposed by the Bureau. At the same meeting, the Committee adopted the draft decision without a vote.

(*j*) Administration of justice at the United Nations

The General Assembly considered the item at its fifty-fifth to fifty-seventh sessions, at its fifty-ninth session and at its sixty-first to sixty-fifth sessions.[722]

At its sixty-second session, in 2007, the General Assembly decided to establish: (a) 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; (b) the Office of Administration of Justice, comprising the Office of the Executive Director and the Office of Staff Legal Assistance and the Registries for the United Nations Dispute Tribunal and the United Nations Appeals Tribunal; (c) a single integrated and decentralized Office of the Ombudsman for the United Nations Secretariat, funds and programmes with branches in several duty stations and a new mediation division; (d) the Internal Justice Council; and (e) the Management Evaluation Unit in the Office of the Under-Secretary-General for Management.[723]

At its sixty-third session, in 2008, the General Assembly decided to adopt the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal; also decided that those Tribunals would be operational as of 1 July 2009; and further decided that all persons who had access to the Office of the Ombudsman under the previous system would also have access to the new informal system.[724]

At its sixty-fourth session, 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. At that same session, the General Assembly requested the Secretary-General to submit to it a joint report for the entities covered by the integrated Office of the Ombudsman at its sixty-fifth session and thereafter on a regular basis.[725]

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[721] A/C.6/66/L.27.

[722] General Assembly resolutions 55/258 of 14 June 2001, 57/307 of 15 April 2003, 59/283 of 13 April 2005, 61/261 of 4 April 2007, 62/228 of 22 December 2007, 63/253 of 24 December 2008, 64/119 of 16 December 2009 and 64/233 of 22 December 2009 and decisions 56/458 C of 27 June 2002, 58/576 of 13 September 2004, 61/503 A of 13 September 2006, 63/531 of 11 December 2008, 64/527 of 16 December 2009, 64/553 of 29 March 2010. and 65/513 of 6 December 2010.

[723] General Assembly resolution 62/228 of 22 December 2007.

[724] General Assembly resolution 63/253 of 24 December 2008.

[725] General Assembly resolution 64/233 of 22 December 2009.

At the sixty-fifth session, the General Assembly decided that the consideration of the outstanding legal aspects of the item, 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,[726] should 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 might take during its sixty-fifth session.[727]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 11th, 17th, 25th, 26th and 27th meetings, respectively on 10, 21 and 31 October, as well as on 1 and 2 November 2011. For its consideration of the item, the Committee had before it the following documents: Report of the Secretary-General on the Amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal;[728] Report of the Internal Justice Council on the Administration of justice at the United Nations;[729] Report of the Secretary-General on the Activities of the Office of the United Nations Ombudsman and Mediation Services;[730] Report on the Secretary-General on the Administration of justice at the United Nations;[731] Letter dated 23 September 2011 from the Presidents of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal to the President of the General Assembly;[732] and Letter dated 7 October 2011 from the Secretary-General to the President of the General Assembly transmitting a letter dated 5 October 2011 from the President of the United Nations Dispute Tribunal addressed to the Secretary-General.[733]

Pursuant to General Assembly decision 65/513 of 6 December 2010, the Sixth Committee decided, at its 1st meeting, on 3 October 2011, 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. Kriangsak Kittichaisaree (Thailand) as Chairman 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 four meetings on 11, 13 and 19 October 2011.

At its 11th meeting, on 10 October 2011, most delegations welcomed the report of the Secretary-General on the Activities of the Office of the United Nations Ombudsman and Mediation Services,[734] the report of the Secretary-General on the Administration of

[726] A/65/86.

[727] General Assembly decision 65/513 of 6 December 2010.

[728] A/66/86 and Add. 1.

[729] A/66/158.

[730] A/66/224.

[731] A/66/275.

[732] A/66/399.

[733] A/66/507.

[734] A/66/224.

justice at the United Nations,[735] as well as the report of the Internal Justice Council on the Administration of justice at the United Nations.[736]

Satisfaction was expressed with the performance of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal since their inception and the tribunals' efficient review of backlogged and new cases was commended. It was stressed that amendments to the statutes of the tribunals, if adopted, should not result in any jurisdictional gap. It was noted that some clarification was needed with respect to certain issues, such as the binding nature of the proposed code of conduct for judges of the tribunals, the conditions and criteria for the removal of judges, as well as the proposed extension of the deadline for management evaluation.

Most delegations emphasized the need to ensure that non-staff personnel were provided with effective mechanisms of redress for the settlement of their disputes with the organization. In this regard, support was expressed for the proposal contained in Annex II of the Secretary-General's report, while further clarification of the recourse mechanisms available to non-staff personnel under the present system was requested.

At the 17th meeting of the Sixth Committee, on 21 October 2011, the Chairman of the Working Group on the Administration of Justice at the United Nations presented an oral report on the work of the Working Group.[737]

At the 25th meeting of the Sixth Committee, on 31 October 2011, the representative of Saudi Arabia introduced, on behalf of the Bureau, two draft resolutions entitled "Code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal"[738] and "Amendments to the rules of procedure of the United Nations Appeals Tribunal".[739]

At the 26th meeting, on 1 November 2011, the Committee decided that its Chairperson would address to the President of the General Assembly a letter drawing his attention to a number of 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 Chairman of the Fifth Committee and circulated as a document of the General Assembly.

At the 27th meeting of the Committee on 2 November 2011, the coordinator made oral revisions to the draft resolutions. At the same meeting, the Sixth Committee adopted both draft resolutions, as orally revised, without a vote.

(ii) *General Assembly*

On 9 December 2011, the General Assembly adopted resolutions 66/106, entitled "Code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal", and 66/107, entitled "Amendments to the rules of procedure of the United Nations Appeals Tribunal", both without a vote. The Assembly adopted the

[735] A/66/275.

[736] A/66/158.

[737] See relevant summary records of the Sixth Committee (see A/C.6/66/SR.17).

[738] A/C.6/66/L.13.

[739] A/C.6/66/L.14.

code of conduct which was annexed to resolution 66/106, and dealt with following values and principles: independence, impartiality, integrity, propriety; transparency; fairness in the conduct of proceedings; competence and diligence. The amendments included in resolution 66/107 addressed the articles on panels; answers, cross-appeals and answers to cross-appeals; case management; and the adoption and issuance of judgements.

(*k*) 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.[740] The General Assembly, by its resolution 65/35 of 6 December 2010, decided to include in the provisional agenda of its sixty-sixth session the item entitled "Report of the Committee on Relations with the Host Country".

In 2011, the Committee was composed of the following 19 Member States: Bulgaria, Canada, China, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, France, Honduras, Hungary, Iraq, Libyan Arab Jamahiriya, Malaysia, Mali, Russian Federation, Senegal, Spain, United Kingdom of Great Britain and Northern Ireland and United States of America.

In 2011, the Committee held the following meetings: the 250th meeting, on 3 February 2011; the 251st meeting, on 31 March 2011; the 252nd meeting, on 22 July 2011; the 253rd meeting, on 7 October 2011; and the 254th meeting, on 2 November 2011. At its 254th meeting, on 2 November 2011, the Committee approved recommendations and conclusions.[741]

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 30th meeting, on 11 November 2011. For its consideration of the item, the Committee had before it the report of the Committee on Relations with the Host Country.[742] At the 30th meeting, on 11 November, the Chairman of the Committee on Relations with the Host Country introduced the report of that Committee.[743]

While taking note of the efforts of the host country to accommodate the needs of the diplomatic community in certain areas, delegations urged the host country to redouble its efforts in addressing the outstanding issues in various fields and stressed the importance of fulfilling its obligations under the Convention on the Privileges and Immunities of the

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[740] General Assembly resolution 2819 (XXVI) of 15 December 1971.

[741] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 26* (A/66/26), chapter IV.

[742] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 26* (A/66/26).

[743] For relevant summary records of the Sixth Committee, see A/C.6/66/SR.30.

United Nations[744] and the Headquarters Agreement.[745] Thus, delegations referred to recent incidents and situations jeopardizing the security and normal functioning of its missions to the United Nations; stressed the need to continue to address, in accordance with international law, the outstanding issues concerning the selective treatment of the diplomats in relation to immigration, travel restrictions for its staff, customs procedures, issuance of visas and parking. With reference to the closure of the bank accounts of the missions by JP Morgan Chase, the need to ensure that the normal functioning of the missions would not be negatively affected by such actions was highlighted.

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, helping missions whose bank accounts were closed by JP Morgan Chase find new accounts and ensuring the safety and security of the United Nations missions as ongoing and increasingly successful.

At the 30th meeting, on 11 November 2011, the representative of Cyprus, on behalf of Bulgaria, Canada, Costa Rica, Côte d'Ivoire and Cyprus, introduced a draft resolution entitled "Report of the Committee on Relations with the Host Country".[746] At the same meeting, the Committee adopted the draft resolution without a vote.

(iii) *General Assembly*

In resolution 66/108, the General Assembly endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 39 of its report,[747] and considered that the maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations and the observance of their privileges and immunities, which was an issue of great importance, were in the interest of the United Nations and all Member States, and 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 urged the host country to continue to take appropriate action, such as the training of police, security, customs and border control officers, with a view to maintaining respect for diplomatic privileges and immunities and if violations occur, to ensure that such cases were properly investigated and remedied, in accordance with applicable law.

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

[745] *Ibid*., vol. 11, p. 11.

[746] A/C.6/66/L.23.

[747] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 26* (A/66/26).

17. *Ad hoc* international criminal tribunals[748]

(*a*) Organization of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda

(i) *Organization of the International Criminal Tribunal for the former Yugoslavia*

Judge Patrick L. Robinson (Jamaica) and Judge O-Gon Kwon (Republic of Korea) continued to act as President and Vice-President of the Tribunal, respectively, until November 2011. Judge Theodor Meron (United States of America) and Judge Carmel Agius (Malta) took over as President and Vice-President of the Tribunal, respectively, on 17 November 2011.

In resolution 1993 (2011) of 29 June 2011, the Security Council, decided to extend the term of office of the following permanent judges at the International Tribunal, who were members of the Trial Chambers, until 31 December 2012 or until the completion of the cases to which they are assigned, if sooner: Jean-Claude Antonetti (France), Guy Delvoie (Belgium), Burton Hall (The Bahamas), Christoph Flügge (Germany), O-Gon Kwon (Republic of Korea), Bakone Justice Moloto (South Africa), Howard Morrison (United Kingdom), and Alphons Orie (The Netherlands). The Council also decided to extend the term of office of the following *ad litem* judges at the International Tribunal, who were members of the Trial Chambers, until 31 December 2012 or until the completion of the cases to which they are assigned, if sooner: Melville Baird (Trinidad and Tobago), Elizabeth Gwaunza (Zimbabwe), Frederik Harhoff (Denmark), Flavia Lattanzi (Italy), Antoine Kesia-Mbe Mindua (Democratic Republic of Congo), Prisca Matimba Nyambe (Zambia), Michèle Picard (France), Árpád Prandler (Hungary) and Stefan Trechsel (Switzerland).

In resolution 2007 (2011) of 14 September 2011, the Security Council decided to reappoint Mr. Serge Brammertz as Prosecutor of the International Tribunal, notwithstanding the provisions of Article 16, paragraph 4, of the Statute of the International Tribunal for the former Yugoslavia related to the length of office of the Prosecutor, for a term with effect from 1 January 2012 until 31 December 2014, which was subject to an earlier termination by the Security Council upon the completion of the work of the International Tribunal.

At the end of 2011, the permanent judges of the Tribunal were as follows: Theodor Meron (President, United States of America), Carmel Agius (Vice-President, Malta), Patrick Robinson (Jamaica), O-Gon Kwon (Republic of Korea), Jean-Claude Antonetti (France), Guy Delvoie (Belgium), Christoph Flügge (Germany), Mehmet Güney (Turkey), Burton Hall (Commonwealth of the Bahamas), Liu Daqun (China), Bakone Justice Moloto (South Africa), Howard Morrison (United Kingdom), Alphons Orie (Netherlands), Fausto Pocar (Italy), Arlette Ramaroson (Madagascar) and Andrésia Vaz (Senegal).

At the end of 2011, the *ad litem* judges of the Tribunal were as follows: Melville Baird (The Republic of Trinidad and Tobago), Elizabeth Gwaunza (Zimbabwe), Frederick Har-

[748] This section covers the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda, 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 International Criminal Tribunal for Yugoslavia and International Criminal Tribunal for Rwanda is contained in chapter VII of this publication.

hoff (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).

(ii) *Organization of the International Criminal Tribunal for Rwanda*

Judge Khalida Rachid Khan (Pakistan) and Judge Dennis C.M. Byron (Saint Kitts and Nevis) continued to act as President and Vice-President of the Tribunal, respectively, until May 2011. Judge Khalida Rachid Khan (Pakistan) and Judge Vagn Joensen (Denmark) took over as President and Vice-President, respectively, of the Tribunal on 27 May 2011.

In resolution 1995 (2011) of 6 July 2011, the Security Council, acting under Chapter VII of the Charter, decided, in light of the exceptional circumstances, that notwithstanding article 12 *bis*, paragraph 3, of the Statute of the International Tribunal, Judge Dennis Byron may work part-time and engage in another judicial occupation from 1 September 2011 until the completion of the case to which he was assigned, took note of the intention of the International Tribunal to complete the case by December 2011, and underscored that such exceptional authorization should not be considered as establishing a precedent.

In resolution 2006 (2011) of 14 September 2011, the Security Council decided to reappoint Mr. Hassan Bubacar Jallow as Prosecutor of the International Criminal Tribunal for Rwanda, notwithstanding the provisions of Article 15, paragraph 4, of the Statute of the International Criminal Tribunal for Rwanda related to the length of office of the Prosecutor, for a term with effect from 15 September 2011 until 31 December 2014, which was subject to an earlier termination by the Security Council upon the completion of the work of the International Tribunal.

In resolution 2013 (2011) of 14 October 2011, the Security Council, acting under Chapter VII of the Charter, decided, in light of the exceptional circumstances, that notwithstanding article 12 *bis*, paragraph 3, of the Statute of the International Tribunal, Judge Bakhtiyar Tuzmukhamedov could work part-time and engage in another judicial occupation until 31 December 2011. The Council underscored that such exceptional authorization should not be considered as establishing a precedent.

In resolution 2029 (2011) of 21 December 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the term of office of the following permanent judges at the International Tribunal, who were members of the Trial Chamber, until 30 June 2012 or until the completion of the trials to which they were assigned, if sooner: Charles Michael Dennis Byron (Saint Kitts and Nevis), Khalida Rachid Khan (Pakistan), William H. Sekule (United Republic of Tanzania) and Bakhtiyar Tuzmukhamedov (Russian Federation). The Council also decided to extend the term of office of the following *ad litem* judges at the International Tribunal, who were members of the Trial Chamber, until 30 June 2012 or until the completion of the trials to which they were assigned, if sooner: Florence Rita Arrey (Cameroon), Solomy Balungi Bossa (Uganda), Robert Fremr (Czech Republic), Vagn Joensen (Denmark), Gberdao Gustave Kam (Burkina Faso), Lee Gacugia Muthoga (Kenya), Seon Ki Park (Republic of Korea) and Mparany Mamy Richard Rajohnson (Madagascar).

At the end of 2011, the permanent judges were as follows: Khalida Rachid Khan (President, Pakistan), Vagn Joensen (Vice-President, Denmark), William H. Sekule (United

Republic of Tanzania), Dennis Byron (Saint Kitts and Nevis), and Bakhtiyar Tuzmukhamedov (Russian Federation).

At the end of 2011, the *ad litem* judges were as follows: Solomy Balungi Bossa (Uganda), Lee Gacugia Muthoga (Kenya), Florence Rita Arrey (Cameroon), Seon Ki Park (Republic of Korea), Gberdao Gustave Kam (Burkina Faso), Mparany Rajohnson (Madagascar), Aydin Sefa Akay (Turkey) and Robert Fremr (Czech Republic).

(iii) *Composition of the Appeals Chamber*

At the end of 2011, 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), Judge Arlette Ramaroson and Carmel Agius (Malta).

(*b*) General Assembly

On 11 November 2011, the General Assembly adopted decisions 512 and 513, by which it took note of the reports[749] of the International Criminal Tribunal for Rwanda and International Criminal Tribunal for the former Yugoslavia, respectively.

On 24 December 2011, the General Assembly adopted resolution 66/238 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", without a vote, on the recommendation of the Fifth Committee. The General Assembly, *inter alia*, took note of the second performance report of the Secretary-General on the budget of the International Criminal Tribunal for Rwanda for the biennium 2010–2011,[750] and endorsed the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions.[751] 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 resolution 66/239 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", without a vote, on the recommendation of the Fifth Committee. The General Assembly, *inter alia*, took note of the second performance report of the Secretary-General on the budget of the International Criminal Tribunal for the former Yugoslavia for the biennium 2010–2011,[752] and endorsed the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary

[749] A/66/209 and A/66/210.

[750] A/66/557 and Corr.1.

[751] A/66/600.

[752] A/66/555.

Questions.[753] 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 2011, the General Assembly adopted resolution 66/240 entitled "International Residual Mechanism for Criminal Tribunals", without a vote, on the recommendation of the Fifth Committee. The Assembly took note of the reports of the Secretary-General on the financing of the International Residual Mechanism for Criminal Tribunals for the biennium 2012–2013,[754] and on the revised estimates arising from the effects of changes in rates of exchange and inflation,[755] and endorsed the conclusions and recommendations contained in the reports of the Advisory Committee on Administrative and Budgetary Questions,[756] subject to the provisions of the resolution.

(*c*) Security Council

In resolutions 1993 (2011) of 29 June, 1995 (2011) of 6 July and 2013 (2011) of 14 October 2011, the Security Council recalled its resolution 1966 (2010) by which it requested the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda to take all possible measures to expeditiously complete all remaining work no later than 31 December 2014, prepare closure and ensure a smooth transition to the International Residual Mechanism for Criminal Tribunals. In resolutions 1995 (2011) and 2013 (2011), the Council noted that, upon the completion of the cases to which they were assigned, four permanent judges would be redeployed from the Trial Chambers of the International Criminal Tribunal for Rwanda to the Appeals Chamber and two permanent judges would leave the International Criminal Tribunal for Rwanda. Furthermore, in resolutions 1993 (2011) and 1995 (2011), the Council, acting under Chapter VII of the Charter, reaffirmed the necessity of trial of persons indicted by the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda and reiterated its call on all States, especially the States of the former Yugoslavia and of the Great Lakes region, to intensify cooperation with and render all necessary assistance to the Tribunals, and in resolution 1995 (2011) the Council in particular called upon relevant States to increase their efforts to bring Felicien Kabuga, Augustin Bizimana, Protais Mpiranya and other indictees of the International Criminal Tribunal for Rwanda to justice. In resolution 1993 (2011), the Council took note of the assessments by the International Criminal Tribunal for the former Yugoslavia in its Completion Strategy Report.[757] The Council also noted with concern the risk that there would be insufficient capacity for the enforcement of sentences imposed by the Tribunal.

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[753] A/66/600.

[754] A/66/537 and Corr.1.

[755] A/66/605.

[756] A/66/600 and A/66/7/Add.22.

[757] S/2011/316.

(*d*) Amendments to the Statutes of International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda

(i) *Amendments to the Statute of the International Criminal Tribunal for the former Yugoslavia*[758]

No amendments were made to the Statute of the International Criminal Tribunal for the former Yugoslavia in 2011.

(ii) *Amendments to the Statute of the International Criminal Tribunal for Rwanda*[759]

No amendments were made to the Statute of the International Criminal Tribunal for Rwanda in 2011. However, in resolution 1995 (2011) of 6 July 2011, the Security Council, acting under Chapter VII of the Charter, decided that, notwithstanding article 13, paragraph 1, and article 12 *quater*, paragraph 2 (a), of the Statute of the International Tribunal, *ad litem* judges may be eligible for election as, and may vote in the election of, the President of the International Tribunal and decided in this regard that an *ad litem* judge elected as President of the International Tribunal may exercise the same powers as a permanent judge, which would not alter his or her status or give rise to any additional allowances or benefits other than those which already existed, and would effect no changes of the current terms and conditions of service as an *ad litem* judge. The Council also decided that, notwithstanding article 12 *quater*, paragraph 2, of the Statute, an *ad litem* judge elected as Vice President of the International Tribunal could act as President when required to do so under the Statute or the Rules of Procedure and Evidence, which would not alter his or her status or give rise to any additional allowances or benefits other than those which already existed, and would effect no changes of the current terms and conditions of service as an *ad litem* judge.

[758] 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).

[759] 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), 1878 (2009) and 1932 (2010).

(*e*) Amendments to the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda

(i) *Amendments to the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia* [760]

Rule 65 (B) of the Rules of Procedure and Evidence dealing with provisional release was amended by a decision of the extraordinary plenary session of the International Criminal Tribunal for the former Yugoslavia, held on 20 October 2011. Under the terms of the amendment, release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgement by a Trial Chamber and the existence of sufficiently compelling humanitarian grounds may be considered in granting such release.

(ii) *Amendments to the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda*[761]

No amendments were made to the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda in 2011.

B. General review of the legal activities of intergovernmental organizations related to the United Nations

1. International Labour Organization (ILO)

(*a*) Convention, recommendation and resolutions adopted by the International Labour Conference during its one hundredth session (Geneva, June 2011)[762]

At the one hundredth session of the International Labour Conference ("Conference"), one convention, one recommendation and eight resolutions were adopted. The convention, recommendation and three resolutions are highlighted below.

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[760] International Criminal Tribunal for the former Yugoslavia, document IT/32/Rev.46, dated 20 October 2011.

[761] Available from http://www.unictr.org/Portals/0/English/Legal/ROP/100209.pdf (accessed on 31 December 2011).

[762] International Labour Organization, *Resolutions adopted by the International Labour Conference at its 100th Session* (Geneva, June 2011). Available from http://www.ilo.org (accessed on 31 December 2011).

(i) *Convention Concerning Decent Work for Domestic Workers, 2011 (No. 189) and Recommendation No. 201 supplementing it, and a resolution concerning efforts to make decent work a reality for domestic workers worldwide*

On 16 June 2011, the Conference adopted the Convention Concerning Decent Work for Domestic Workers, 2011 (No. 189) and Recommendation No. 201 supplementing it.[763] This was the first time the International Labour Office had formulated international labour standards dedicated to that particular group of workers, which was to a large extent comprised of women. The instruments highlighted the economic and social value of domestic work and set out principles and measures for ensuring that domestic workers, like workers generally, enjoy their fundamental rights at work, fair terms of employment and decent working conditions.[764]

The Convention required ratifying States to take measures to ensure the effective promotion and protection of human rights of all domestic workers. More specifically, its provisions covered freedom of association and the right to collective bargaining, the elimination of forced labour, child labour and discrimination, as well as protection from all forms of harassment abuse and violence. Further, the Convention addressed the right of domestic workers to be informed of their terms and conditions to employment, the limitation of working hours, minimum wages and wage protection, occupational safety and health and the extension of social security to domestic workers. Several provisions set out specific protections for young domestic workers, live-in domestic workers and migrant domestic workers, including protection from abusive practices by private employment agencies. The Convention also called for the establishment of effective and accessible complaints mechanisms and other means for ensuring compliance with national laws and regulations for the protection of domestic workers.

Recommendation No. 201 offered practical guidance for the strengthening of national law and polices on domestic work with regard to the matters addressed in the Convention. Moreover, the Recommendation contained guidance on several aspects of domestic work not regulated by the Convention, e.g. policies and programmes for the professional development of domestic workers, work-life balance, provisions regarding statistical data on domestic work and international cooperation in a number of areas, including with regard to ensuring protection of the rights of domestic workers employed by persons enjoying diplomatic immunity.

The Conference also adopted, on the 15 June 2011, a resolution concerning efforts to make decent work a reality for domestic workers worldwide.[765] The resolution called for ILO action to promote the widespread ratification and implementation of the Conven-

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[763] International Labour Organization, Provisional Record No. 15A of the 100th Session of the International Labour Conference, document 15A/1 and Provisional Record No. 15B of the 100th Session of the International Labour Conference, document 15B/1. Available from http://www.ilo.org (accessed on 31 December 2011). The text of the Convention is also reproduced under Chapter IVB.

[764] A brief overview of the Convention and Recommendation is contained in *Decent work for Domestic Workers: Convention 189 & Recommendation 201 at a glance*, (Geneva, 2011), p. 30. Available from, http://www.ilo.org (accessed on 31 December 2011).

[765] International Labour Organization, *Resolutions adopted by the International Labour Conference at its 100th Session* (Geneva, June 2011). Available from http://www.ilo.org (accessed on 31 December 2011).

tion No. 189 and implementation of Recommendation No. 201. It emphasized support for Governments and workers' and employers' organizations in the sharing of knowledge, information and good practices on domestic work, related capacity-building and cooperation between the ILO and other relevant international organizations.

(ii) *Resolution concerning labour administration and labour inspection*

On 16 June 2011, the Conference adopted a resolution and Conclusions on labour administration and labour inspection.[766] The Conclusions recognized that effective labour administration systems, public employment services and labour inspection were vital for good governance of labour matters and for economic and social progress. The Conclusions called for the ratification, implementation and effective application of the relevant international labour standards, in particular the Labour Inspection Convention, 1947 (No. 81)[767] and its Protocol of 1995,[768] the Employment Service Convention, 1948 (No. 88),[769] the Labour Inspection (Agriculture) Convention, 1969 (No. 129),[770] and the Labour Administration Convention, 1978 (No. 150),[771] encouraged international cooperation exchanges, including South–South cooperation, and suggested the development of a database, accessible through the ILO website, on best practices in labour administration and inspection.

(iii) *Resolution concerning the recurrent discussion on social protection (social security)*

On 17 June 2011, the Conference adopted a resolution and Conclusions concerning the recurrent discussion on social protection (social security).[772] The Conclusions recognized the role of and need for social security, affirmed that closing social security coverage gaps was of highest priority for equitable growth, social cohesion and decent work for all men and women and underlined the contribution of effective and comprehensive national social security extension strategies, in line with national circumstances, to achieving those objectives. The Conference further concluded that "these national strategies should aim at achieving universal coverage of the population with at least minimum levels of protection and progressively ensuring higher levels of protection guided by up-to-date ILO social security standard",[773] at least at the level set out in the Social Security (Minimum Standards) Convention, 1952 (No. 102).[774] In view of this, the Conference called for "the rapid implementation of national social protection floors containing basic social security guar-

[766] *Ibid.*

[767] United Nations, *Treaty Series*, vol. 54, p. 3.

[768] *Ibid.*, vol. 1985, p. 527.

[769] *Ibid.*, vol. 70, p. 85.

[770] *Ibid.*, vol. 812, p. 87.

[771] *Ibid.*, vol. 1201, p. 179.

[772] International Labour Organization, *Resolutions adopted by the International Labour Conference at its 100th Session* (Geneva, June 2011). Available from http://www.ilo.org (accessed on 31 December 2011).

[773] *Ibid.*, para. 8.

[774] United Nations, *Treaty Series*, vol. 210, p. 131.

antees that ensure that over the life cycle all in need can afford and have access to essential health care and have income security at least at a nationally defined minimum level"[775].

In order to strengthen the normative basis of the extension of social security, the Conference concluded that there was a need for a new international labour standard in the form of an autonomous recommendation on the subject in order to complement the existing ILO social security standards and to provide flexible but meaningful guidance to Member States in building social protection floors within comprehensive social security systems tailored to national circumstances and levels of development. Consequently, the Governing Body of the International Labour Office decided to place a standard-setting item on the agenda of the one hundred and first session (2012) of the Conference on social protection (social security), with a view to the elaboration of an autonomous recommendation on the social protection floor (single discussion). In conformity with Article 38 of the Standing Orders of the Conference, the International Labour Office prepared a summary report on the law and practice in different countries, accompanied by a questionnaire drawn up with a view to preparing the text of the proposed recommendation. The summary report and questionnaire were sent out to ILO Member States and, on the basis of replies, the Office prepared a final report summarizing the views expressed and proposed a draft recommendation. It was also reported that the proposed recommendation would be discussed and put forward for adoption by the Conference at its 101st session in June 2012.

(iv) *Resolution concerning gender equality and the use of language in legal texts of the ILO*

On 9 June 2011, the Conference adopted a resolution concerning gender equality and the use of language in legal texts of the ILO.[776] Equality for women and men in the world of work is a core value of the ILO. The resolution concerning gender equality and the use of language in legal texts of the ILO affirmed that gender equality should be reflected through the use of appropriate language in official legal texts of the Organization and that, in the ILO Constitution and other legal texts of the Organization, the use of one gender included in its meaning a reference to the other gender unless the context required otherwise.

(v) *Other resolutions adopted in 2011*

- Resolution concerning the scale of assessments of contributions to the budget for 2012
- Resolution concerning the composition of the Administrative Tribunal of the International Labour Organization
- Resolution concerning the adoption of the Programme and Budget for 2012–13 and the allocation of the budget of income among member States
- Resolution concerning the financial report and audited financial statements for 2010
- Resolution concerning appointments to the ILO Staff Pension Committee

[775] International Labour Organization, *Resolutions adopted by the International Labour Conference at its 100th Session* (Geneva, June 2011), para. 9. Available from http://www.ilo.org (accessed on 31 December 2011).

[776] *Ibid*.

(*b*) Guidance documents submitted to the Governing Body of the International Labour Office

(i) *Code of practice on safety and health in agriculture*

At its three hundred and tenth session held in March 2011, the Governing Body of the International Labour Office authorized the publication of the Code of practice on safety and health in agriculture,[777] elaborated by a meeting of experts held from 25 to 29 October 2010. This code of practice was devoted to improving Occupational Safety and Health (OSH) in agriculture and complements the Safety and Health in Agriculture Convention 2001 (No. 184),[778] and its supplementing Recommendation (No. 192), providing further guidance for their application in practice. It provided guidance on appropriate strategies to address the range of OSH risks encountered in agriculture in order to prevent—as far as reasonably possible—accidents and diseases for all those engaged in this sector. It also provided guidance on the roles of the competent authorities, employers, workers and their organizations in promoting OSH within that sector.[779]

(ii) *Resolution concerning the ILO minimum basic wage for the able seafarer*

On 10 November 2011, the Governing Body of the International Labour Office authorized the Director-General to communicate the text of the resolution concerning the ILO minimum basic wage for the able seafarer,[780] adopted by the Subcommittee on Wages of Seafarers of the Joint Maritime Commission, at its meeting in Geneva on 26 and 27 April 2011.[781] That resolution updated the ILO minimum basic wage for able seafarers from its current value of US$545 to $555 as of 1 January 2012, $568 as of 1 January 2013, and $585 as of 31 December 2013 and provided that the next meeting of the Subcommittee should be held in the first half of 2014. The Subcommittee also noted that the current mechanism, including the formula, needed to be maintained until such time as an alternative was agreed. The increased wage figure was to be applied in substitution for those in paragraph 10 of the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187), and Guideline B2.2.4 of the Maritime Labour Convention, 2006, on the minimum monthly basic pay or wage figure for able seafarers.

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[777] International Labour Organization, *Report of the Committee on Sectoral and Technical Meetings and Related Issues*, March 2011, document GB.310/14. Available from http://www.ilo.org (accessed on 31 December 2011).

[778] United Nations, *Treaty Series*, vol. 2227, p. 241.

[779] The full text of the code is available at International Labour Organization, *Code of practice on safety and agriculture*, document MESHA 2010/10. Available from http://www.ilo.org (accessed on 31 December 2011).

[780] International Labour Organization, *Other questions: Effect to be given to the recommendations of sectoral and technical meetings*, document GB.312/POL/8. Available from http://www.ilo.org (accessed on 31 December 2011).

[781] *Ibid*. Available from http://www.ilo.org (accessed on 31 December 2011).

(*c*) Legislative advisory services

In 2011, the ILO provided technical assistance, among other things, in reporting and other international labour standards-related obligations, including capacity-building, assistance with implementation and reform of national legislation, to nearly 40 countries.[782]

In addition, as concerns social security standards-related issues in particular, the ILO provided technical advice to six Member States with respect to the requirements of the ILO Social Security (Minimum Standards) Convention 1952 (No. 102). Legal advice for the formulation of national legislation in the context of social security reform was also given to three Member States.

Furthermore, the ILO conducted in collaboration with the International Training Centre of the ILO around 30 training activities at the interregional, regional, subregional and national levels which addressed procedures relating to standard-setting and supervision, as well as specific topics such as equality in employment, freedom of association, efforts to eliminate child labour and forced labour, and the use of international labour standards by national jurisdictions.[783]

(*d*) Committee on Freedom of Association

In 2011, the Committee on Freedom of Association (CFA) had before it 212 cases pending and examined 114 cases on substance during its three annual sessions. The main allegations examined by the CFA in 2011 concerned cases of anti-union discrimination, violence against trade unionists as well as against employers (which was a new trend), the issue of the right to strike in essential services as well as restrictions to the right to bargain collectively in the public sector.[784]

2. Food and Agriculture Organization of the United Nations

(*a*) Membership of the Food and Agriculture Organization (FAO)

On 25 June 2011, the Conference of FAO admitted Tokelau as Associate Member of the Organization.[785] Accordingly, as of that date, the membership of FAO consisted of 191 Member Nations, one Member Organization (the European Union) and two Associate Members (the Faroe Islands and Tokelau).

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[782] International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations: Report III, 2012—101st Session (Part 2)—Information document on ratifications and standards-related activities*, document ILC.101/111/2, paras 45–62. Available from http://www.ilo.org (accessed on 31 December 2011).

[783] *Ibid*., para 63.

[784] *Ibid*., para 36.

[785] See Food and Agriculture Organization, Report of the Thirty-seventh Session of the Conference of Food and Agriculture Organization (Rome, 25 June—2 July 2011), document C 2011/REP, paras. 125–128. Available from http://www.fao.org/docrep/meeting/023/mb767e.pdf (accessed on 31 December 2011).

(*b*) Constitutional and general legal matters

At its 37th session (25 June to 2 July 2011), the Conference of FAO adopted a number of amendments to the Basic Texts of the Organization. It approved the proposed change of the official name of FAO in Spanish (to "*Organización de las Naciones Unidas para la Alimentación y la Agricultura*") so that the word "food" preceded the word "agriculture", for the sake of consistency among the designations of the Organization in other language versions. It adopted resolution 8/2011, entitled "Amendment to the General Rules of the Organization", which contained an amendment of Rule XII, paragraph 11 of the General Rules of the Organization. It also adopted resolution 9/2011, entitled "Amendments to the Financial Regulations", which contained amendments to the Financial Regulations for the Implementation of the International Public Sector Accounting Standards.[786]

At its 141st session (11 to 15 April 2011), the Council adopted the "Terms of Reference and Composition of the Ethics Committee".[787] Subsequently, the Director-General established the Committee as of 1 January 2012 for a term of four years.

(*c*) Legislative matters

(i) *Legislative assistance and advice*

During 2011, FAO provided legislative assistance and advice to more than 90 States by means of written comments and advice in drafting national legislation and regulations on the topics of animal health, agribusiness, trade and cooperatives, biodiversity and genetic resources legislation, climate change, fisheries and aquaculture, food safety, food security and sovereignty, forestry, land, plant protection legislation, including pesticide control, seeds and water.

FAO also provided legal assistance and advice during a number of workshops, symposiums and technical consultation meetings, including the FAO Technical Consultation on Flag State Performance (Rome, May 2011), the Expert Consultation to Develop FAO Technical Guidelines for Responsible Recreational Fishing (Germany, August 2011), the Special Session of the European Inland Fisheries and Aquaculture Advisory Committee for the adoption of the new Rules of Procedure (Rome, October 2011), the FAO Informal Open-ended Technical Meeting to review draft Terms of Reference for the Ad Hoc Working Group Referred to in paragraph 6 of article 21 of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009,[788] and draft Terms of Reference for an appropriate Funding Mechanism referred to in article 21 of the Agreement to assist developing States implement the Agreement (Rome, November 2011) and the Inaugural Meeting of the Central Asia and Caucuses Fisheries and Aquaculture Commission (Turkey, December 2011).

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[786] *Ibid*., paras. 115–117.

[787] *Ibid*., Report of the Hundred and Forty-first Session of the Council of the Food and Agriculture Organization, (Rome, 11–15 April 2011), document CL 141/REP, para. 58 making reference to Annex III of the Report of the Hundred and Thirty-eighth Session of the Finance Committee, document CL 141/9. Available at http://www.fao.org/docrep/meeting/021/ma745e.pdf (accessed on 31 December 2011).

[788] The text of the Agreement can be found at http://www.fao.org/Legal (accessed on 31 December 2011).

(ii) *Legislative research and publications*

The FAO Legal Office published the following Legal Papers Online in 2011:[789]

"Guião para a integração da perspectiva de género na legislação relativa a terra e águas em Angola, Cabo Verde e Moçambique",[790]

"Prévenir, contrecarrer et éliminer la pêche INDNR, Mesures du ressort de l'Etat du port",

"Drafting Community Forestry Agreements, From Negotiation to Signature—A Practitioner's Guide".

(iii) *Collection, Translation and Dissemination of Legislative Information*

During 2011, FAO continued to collect, translate and disseminate legislative information on food and agriculture legislation worldwide through its online databases which were freely accessible from the Legal Office's website. FAOLEX[791] offered access to legislation, regulations and international agreements in 16 different areas related to FAO's fields of expertise. It was a comprehensive research tool which could be used to identify the state of national laws on natural resource management and to compare legislation in different countries. FISHLEX[792] provided detailed information on coastal state requirements for foreign fishing. WATERLEX[793] contained an analysis of the legal framework governing water resources in a large number of countries. WATER TREATIES[794] contained international agreements on international water sources. ECOLEX[795] was a joint environmental law information service of the United Nations Environment Programme (UNEP), International Union for Conservation of Nature (IUCN) and FAO that contained 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.

[789] Available from http://www.fao.org/Legal/prs-ol/paper-e.htm (accessed 31 December 2011).

[790] Guide relating to the integration of a gender perspective in legislation relating to land and water in Angola, Cape Verde and Mozambique.

[791] See http://faolex.fao.org/faolex/ (accessed 31 December 2011).

[792] See http://faolex.fao.org/fishery (accessed 31 December 2011).

[793] See http://faolex.fao.org/faolex/waterlex.htm (accessed 31 December 2011).

[794] See http://faolex.fao.org/watertreaties/ (accessed 31 December 2011).

[795] See http://www.ecolex.org/start.php (accessed 31 December 2011).

3. United Nations Educational, Scientific and Cultural Organization

(*a*) Constitutional and procedural questions

Membership in the Organization

The Republic of South Sudan and Palestine became Member States of United Nations Educational, Scientific and Cultural Organization (UNESCO) on 27 October and 23 November 2011, respectively.

(*b*) International regulations

(i) *Entry into force of instruments previously adopted*

No multilateral conventions or agreements, adopted under the auspices of UNESCO, entered into force during 2011.

(ii) *Instruments adopted by the General Conference of UNESCO at its thirty-sixth session, Paris, 25 October to 10 November 2011*

Recommendations

On 10 November 2011, the thirty-sixth session of the General Conference adopted the Recommendation on the Historic Urban Landscape, including a glossary of definitions.[796]

(iii) *Instruments adopted by intergovernmental conferences convened solely by UNESCO or jointly with other international organizations*

On 26 November 2011, an International Conference of States convened by UNESCO adopted the Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education.[797]

(iv) *Proposals concerning the preparation of new instruments*

a. Revision of the Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in the African States, 1981[798]

The thirty-sixth session of the General Conference decided to convene, in 2012–2013, an international regional conference of States, with a view to examining and adopting amendments to the Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in the African States, 1981. It also authorized the Executive Board and the Director-General to take the appropriate measures for the organization of this category I conference, in accordance with

[796] Records of the 36th session of the General Conference: Resolutions (volume I), p. 50.

[797] Text of the Convention is available at www.unesco.org.

[798] United Nations, *Treaty Series*, vol. 1297, p. 101.

the respective responsibilities foreseen under the Regulations for the general classification of the various categories of meetings convened by UNESCO (36 C/Resolution 14).

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 programmes implemented by UNESCO relating to that issue[799]

At its thirty-sixth session, the General Conference adopted resolution 42 (36 C/Resolution 42) reiterating its appeal to Member States and potential donors so that extra budgetary funds could be placed at the Secretariat's disposal to hold a meeting of experts in order to finalize the preliminary study for submission to the Executive Board.

(*c*) Human rights

Examination of cases and questions concerning the exercise of human rights coming within UNESCO's fields of competence

The Committee on Conventions and Recommendations of the Executive Board met in private sessions at UNESCO Headquarters from 4 to 6 May 2011 and from 21 to 26 September 2011 in order to examine communications transmitted to it in accordance with Decision 104 EX/3.3 of the Executive Board.

At its May 2011 session, the Committee examined 25 communications, of which four were examined with a view to determining admissibility, 17 were examined as to their substance and four were examined for the first time. Four communications were struck from the list because they were considered as having been settled. The examination of the remaining 21 was deferred (one to the 189th session of the Board). The Committee presented its report to the Executive Board at its 186th session.

At its September 2011 session, the Committee examined 25 communications, of which three were examined with a view to determining admissibility, 17 were examined as to their substance and five were examined for the first time. One communication was struck from the list because it was considered as having been settled. The examination of the remaining 24 was deferred. The Committee presented its report to the Executive Board at its 187th session.

(*d*) Copyright activities

The fourteenth session of the Intergovernmental Copyright Committee established under the Universal Copyright Convention,[800] for which UNESCO provided the Secretariat, took place from 7 to 9 June 2010. At that session, 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

[799] The texts of UNESCO standard-setting instruments are available on UNESCO's website (http://www.unesco.org).

[800] United Nations, *Treaty Series*, vol. 216, p. 132.

either of one or more of its members or of the Secretariat. Consequently, UNESCO did not take activities under the implementation of the Convention in 2011.

4. International Civil Aviation Organization

(*a*) Membership

The Republic of South Sudan deposited its notification of adherence to the Convention on International Civil Aviation, 1944 (the Chicago Convention)[801] with the Government of the United States on 11 October 2011. The adherence took effect on 10 November 2011, making the Republic of South Sudan the newest Member State of the International Civil Aviation Organization (ICAO) and bringing the number of Member States to 191.

(*b*) Depositary actions in relation to multilateral air law instruments

A total of 64 depositary activities by States were recorded during 2011. A chronological record of States that signed, ratified, acceded, accepted or adhered to multilateral air law instruments during 2011 could be found on the ICAO website[802] as part of the Legal Affairs and External Relations Bureau's Treaty Collection.

(*c*) Other legal activities

(i) *Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks*

The Preparatory Commission in relation to the International Fund to be established pursuant to the Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft, 2009,[803] held two meetings, the first in Geneva in March, and the second in Ottawa in June. The Commission continued its work on a number of issues, including the regulations of the International Fund; regulation on the period and amount of initial contributions to the fund; guidelines on "drop-down"; guidelines on investment and financial governance arrangements; guidelines on compensation and arrangements with insurers on claims handling; and rules of procedure for the Conference of Parties.

State letters were issued that informed of:

1) the decision of the 37th Session of the Assembly urging States to bring about the entry into force of the two relevant Conventions adopted in 2009, namely:

a) Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft 2009; and

[801] *Ibid*., vol. 15, p. 295.

[802] http://www.icao.int.

[803] International Civil Aviation Organization, document 9920.

b) Convention on Compensation for Damage Caused by Aircraft to Third Parties, 2009,[804]

and urged States with experts having the relevant expertise to join in the work of the Preparatory Commission referred to above; and

2) the adoption in 2010 of Assembly Resolution A37–22, entitled "Consolidated statement of continuing ICAO policies in the legal field" which, *inter alia*, urged all States to ratify as soon as possible the two Conventions adopted in 2009.

(ii) *Legal issues relating to unruly passengers*

The reactivated Secretariat Study Group on Unruly Passengers held its first meeting in Montréal in May and its second, hosted by France, in Paris in October 2011. The Study Group recommended that further work be carried out to study the possibility of modernizing the Convention on Offences and Certain Other Acts Committed on Board Aircraft,1963,[805] with particular reference to the issue of unruly passengers. The Council decided at its 194th Session that a subcommittee of the Legal Committee would be established for this purpose.

(iii) *Promotion of Beijing Instruments*

Pursuant to Assembly Resolution A37–23, entitled "Promotion of the Beijing Convention (Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, 2010),[806] and the Beijing Protocol (Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, 2010[807])", the Council and the Secretariat continued to promote the ratification of the Beijing instruments. One seminar was organized in April in Bucharest, Romania, under the joint auspices of ICAO and the Central European Rotation Group (Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia); another seminar was organized in May in Tegucigalpa, Honduras, under the joint auspices of ICAO and the Central American Corporation for Air Navigation Services.

(iv) *International interests in mobile equipment (aircraft equipment)*

On behalf of the Council, and in its capacity as the Supervisory Authority of the International Registry, the Secretariat continued monitoring the operation of the Registry to ensure that it functioned efficiently in accordance with article 17 of the Cape Town Convention of 2001 (Convention on International Interests in Mobile Equipment, 2001).[808] A new contract was concluded with the Registrar, Aviareto Ltd., for a second five-year term commencing 1 March 2011, as a result of the Council's decision in October 2009, at its 188th Session, to reappoint them.

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[804] *Ibid*., document 9919.

[805] United Nations, *Treaty Series*, vol. 704, p. 219.

[806] International Civil Aviation Organization, document 9960.

[807] *Ibid*., document 9959.

[808] United Nations, *Treaty Series*, vol. 2307, p. 285.

(v) *Tripartite Consultative Committee to discuss issues related to privileges and immunities*

During its 193rd Session, the Council delegated to its President the authority to appoint a group of selected members of the ICAO Council to participate in meetings of a Tripartite Consultative Committee established at the initiative of the Government of Canada. The purpose of the Tripartite Consultative Committee, which was composed of representatives from the Office of Protocol of Canada, the Office of Protocol of Quebec, and ICAO, was to discuss issues related to the privileges and immunities of Representatives accredited to ICAO and questions of implementation of existing agreements or texts related thereto. The Committee held two meetings, in May and November 2011.

5. International Maritime Organization

(*a*) Membership of the Organization

As of 31 December 2011, the membership of the International Maritime Organization (IMO) stood at 170.

(*b*) Work undertaken by the Legal Committee of the IMO

The Legal Committee ("the Committee") held its ninety-eighth session from 4 to 8 April 2011.

(i) *Guidelines on 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, 2010 ("2010 HNS Convention")*[809]

a. Draft consolidated text of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 and the Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010.[810]

The Committee approved the consolidated text, noting that it had been prepared by the IMO Secretariat in consultation with the International Oil Pollution Compensation Funds (IOPC Funds) Secretariat and that it was not, in itself, a treaty instrument or authentic text, but was intended to assist Member States and others in implementing the 2010 HNS Convention. The Protocol provided that, upon entry into force, the Convention and the Protocol should be read and interpreted as a single instrument.

b. Revision of the Overview of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and

[809] World Maritime Organization, document LEG/CONF.17/10.

[810] *Ibid*., document LEG/98/4.

Noxious Substances by Sea, 1996, as amended by the Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010.[811]

The Committee approved a revision of the Overview of the 1996 HNS Convention, prepared by the IMO Secretariat in consultation with the IOPC Funds Secretariat. The Overview was consistent with Assembly resolution A.932(22), entitled "Implementation of the HNS Convention", adopted on 29 November 2001, which placed a high priority on implementation of the Convention. It offered a practical guide for States in implementing the complex provisions of the Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010.

c. Proposed reporting form on contributing cargo

The Committee approved a model form on the reporting of contributing cargo, prepared by the IOPC Funds Secretariat, which was designed to assist States to meet their reporting requirements upon accession to the Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 and annually thereafter, until the entry into force of the Protocol.

d. Postings on the IMO website

The Committee noted that the complete text of the International Maritime Dangerous Goods Code (IMDG Code), incorporating amendments 27 to 94, which was in effect in 1996, had been posted on the IMO website; and that the consolidated text, the Overview and the model reporting form would be posted on the IMO website.

(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,*[812] *and of the amendments relating thereto*

The Committee noted the information provided by the International Labour Organization (ILO) about the progress towards entry into force of the Maritime Labour Convention, 2006 (MLC 2006) and urged those States that had not already done so, to consider ratifying it at their earliest convenience.

The Committee noted that the Preparatory Tripartite MLC 2006 Committee would hold a second meeting from 12 to 14 December 2011, in Geneva, to discuss the operating procedures for the Special Tripartite Committee, to be set up after the entry into force of the MLC 2006, with a view to adopting amendments to the Convention.

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[811] *Ibid*., document LEG/98/4/1.

[812] *United Nations Juridical Yearbook 2006* (United Nations Publication, Sales No. E.09.V.1), p. 325.

The Committee invited Member States and interested organizations to submit information on cases of abandonment for inclusion in the abandonment database in a timely manner, to ensure the accuracy contained therein.

(iii) *Fair treatment of seafarers in the event of a maritime accident*

The Committee considered a document on unfair treatment of seafarers in the context of shore leave and shore-side medical facilities, based on nationality or religious belief, which was said to have intensified after entry into force of the International Ship and Port Facility Security Code. The Committee was informed that, following consultations with the Secretaries of Maritime Safety Committee and the Convention on Facilitation of International Maritime Traffic, 1965 (FAL)[813], it had been agreed that these issues lay solely within the purview of FAL, under the relevant provisions of the FAL Convention. The Committee requested the Secretariat to refer the relevant document and part of the LEG 98 report to FAL in order that FAL might consider them under the relevant agenda item, and take action as deemed appropriate.

The Committee also considered (a) a submission by the International Chamber of Shipping to consider the industry view of fair treatment of seafarers in the aftermath of a pollution incident, as set out in a letter to the United Nations Secretary-General; (b) information from the ILO that, according to the Social Partners, there was need for promotional work on the Guidelines to be undertaken; and (c) a statement by the United Nations Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea (DOALOS), in which it was noted that the General Assembly had called, in a resolution in December 2010, for safety and security measures for seafarers to be implemented with minimal negative effects on seafarers and fishers, especially in relation to their working conditions.

The Committee approved the draft Assembly resolution on Guidelines on fair treatment of seafarers in the event of a maritime accident, 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.

(iv) *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)[814] in accordance with article 8 of LLMC 1996*

The Committee recalled that, at its ninety-seventh session, it had agreed to a proposal to add a new work programme and planned output for the 2010-2011 biennium to consider amending the limits of liability of LLMC 96, under the tacit amendment procedure.

The Committee further recalled that by Circular letter N0.3136 of 6 December 2010, the Secretary-General, in accordance with article 8.1 of LLMC 96, had circulated a proposal by 20 States parties to LLMC 96 to increase the limits of liability in article 6.1(a) and (b), to be considered by the Committee at its ninety-ninth session, in April 2012.

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[813] United Nations, *Treaty Series*, vol. 591, p. 265.

[814] *United Nations Juridical Yearbook 1996* (United Nations Publication, Sales No. 01.V.10), p. 357.

The Committee noted the information provided by the delegation of Australia, giving an historical comparison of past increases in the limits of liability, by reference to the limits of liability in the 1957 International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships,[815] LLMC 76 and LLMC 96.

It also noted information provided by the observer delegation of the Comité Maritime International (CMI), reviewing the relationship for loss of life/personal injury and other (property) claims under article 6(1)(a) and (b) of the LLMC 96; and considering the impact of increasing loss of life/personal injury limits, as set out in article 7 of LLMC 96 (passengers) and article 7 of the Protocol of 2002 to the Athens Convention on the Carriage of Passengers and their Luggage by Sea.[816]

There was broad agreement on the need to review the limits of liability in LLMC 96 in order to ensure the availability of adequate compensation to victims, as well as on the applicability of the tacit amendment procedure to bring any revisions of the limits into force. It was also agreed that no decisions regarding the amount of any possible increase in limits of liability would be taken by the Committee at that session, since the formal proposal for an amendment under article 8 would be considered at the Committee's next session, in April 2012.

(v) *Piracy*

a. Review of national legislation

The Committee noted the updated assessments of national legislation on piracy, and its collaboration with DOALOS and the United Nations Office on Drugs and Crime (UNODC) on the subject. Legislation from 63 States, received by the Secretariat and the other two organizations, and on the DOALOS website,[817] showed that legislation was not harmonized and that there was an uneven incorporation into national law of the definition of piracy and other relevant provisions of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS).[818]

The Committee discussed the priority for States to have suitable legislation in place for the prosecution of pirates, based on UNCLOS, customary international law and elements of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA)[819] which complemented the UNCLOS provisions. The view was expressed that adoption of a new international or regional instrument would be a long-term aim but, for the current period, guidelines or model legislation might be more useful, along with capacity building in States to assist with enactment or revision of domestic laws. To facilitate that, the Committee requested the circulation of documents submitted by DOALOS, UNODC and Ukraine, which could be useful to States which were either developing national legislation on piracy or were reviewing existing legislation on piracy.

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[815] United Nations, *Treaty Series*, vol. 1412, p. 73.

[816] The full text of the Protocol is available at http://www.imo.org/Pages/home.aspx (accessed on 31 December 2011).

[817] Available at http://www.un.org/Depts/los/index.htm.

[818] United Nations, *Treaty Series*, vol. 1833, p. 3.

[819] *Ibid*., vol. 1678, p. 201.

The Committee stressed that those documents did not constitute definitive interpretations of the instruments referred to therein, and in particular they should not be considered as limiting, in any way, the possible interpretations by States parties of the provisions of those instruments.

b. Working Group 2 of the Contact Group on Piracy off the Coast of Somalia

The Committee took note of information regarding the seventh session of Working Group 2, focusing on a report by Mr. Jack Lang, the Secretary General of the United Nation's special adviser on piracy, which, *inter alia*, suggested strengthening the rule of law in Somalia by establishing specialized courts in the country, as well as an extraterritorial specialized Somali court. Working Group 2 had recommended, as an initial step, that a feasibility study be conducted as to the legal aspects of the models for establishing Somali courts, and it also discussed legal aspects of post-trial transfer of convicted pirates, and of the posting of private armed security on commercial vessels.

c. Djibouti Code of Conduct

The Committee was informed that the Maritime Security Committee (MSC), at its eighty-ninth session in May 2011, would be discussing the development of guidance on the employment of private armed security providers on board ships, and measures to improve compliance with Best Management Practices, and other measures to enhance IMO's role in ensuring effective implementation of anti-piracy mechanisms.

(vi) *Technical cooperation activities*

The Committee noted the information provided by the Director of the Technical Co-operation Division reviewing technical cooperation activities on maritime legislation between July and December 2010.

The Committee noted that delivery of technical assistance in maritime legislation matters was planned, funded and implemented through the Integrated Technical Cooperation Programme (ITCP) under three categories: institution-building activities, which typically took the form of short-term technical advisory consultancies; capacity building and training through discrete fellowships or through regional workshops on specific issues; and assistance in drafting or revising national maritime legislation and regulations.

The Committee expressed strong support for the technical cooperation programme, and for the statement of the Legal Committee's thematic priorities that were in effect for the ITCP and decided that no modifications were needed to be made in its medium term goals or thematic priorities for the ITCP 2012–2013.

(vii) *Review of the status of conventions and other treaty instruments*

The Committee noted the information on the status of conventions and other treaty instruments emanating from the work of the Legal Committee. It also took note of a report by the Secretariat that presented information submitted by nine States in response to Circular letter N0.3131 on progress that was being made towards ratification of the

2002 Athens Protocol, 2002, the SUA Protocols, 2005 and the Nairobi Wreck Removal Convention, 2007.

It also noted that the status of the three treaties provided a warning of the dangers to the Committee's reputation occasioned by treaties either not entering into force or attracting few ratifications after entering into force. It was further noted that the Guidelines on the organization and method of work of the Legal Committee stipulated that a "compelling need" should be demonstrated when identifying gaps in the existing treaty regime and deciding whether they should be filled by the adoption of new treaties, or the amendment of existing ones. The fact that some of the conventions for which the Committee was responsible had not entered into force appeared to indicate a lack of "compelling need".

The Committee took note of the information provided and urged States to take every possible measure to ratify the Athens Protocol, 2002, the SUA Protocols, 2005 and the Nairobi Wreck Removal Convention, 2007 at the earliest possible opportunity.

(viii) *Other matters*

a. Report on informal consultations concerning liability and compensation for oil pollution damage resulting from offshore oil exploration and exploitation

The Committee took note of information provided by the delegation of Indonesia, as coordinator of the informal intersessional consultative group, comprising 14 Member States and other participants, to the effect that dedicated instruments for compensating victims of transboundary oil pollution damage were not in force; that there was a need to develop effective measures for mitigating and responding to the impact on the environment caused by incidents of pollution, as well as related liability and compensation issues; and that Indonesia would hold an international workshop on the issue in 2011.

The Committee also noted information provided by the Secretariat on various existing international and regional agreements, including United Nations, European Union and IMO instruments and declarations, relating to control of the marine environment, and to liability and compensation for pollution of the marine environment, not all of them in force; as well as that provided by the delegation of the Russian Federation on work being undertaken by a working group, formed by the G20 Summit held in July 2010, to protect the marine environment from oil spills.

The Committee recommended that, pending approval by the Council and the Assembly of the proposed amendment to Strategic Direction 7.2, the informal consultative group, coordinated by Indonesia, should continue to work together intersessionally to analyze the issue further.

b. Implementation of the Nairobi Wreck Removal Convention, 2007[820] in cases of bareboat charter registration—issuing of certificates

The Committee considered a draft Assembly resolution on the issue of which authority was responsible for issuing certificates of insurance for bareboat registered vessels under

[820] The full text of the Convention is available at http://www.imo.org (accessed on 31 December 2011).

the Nairobi International Convention of the Removal of Wrecks, 2007 (Nairobi Wreck Removal Convention), which aimed at: providing certainty in the future application of the Nairobi Wreck Removal Convention; removing ambiguity regarding the issuing of wreck removal certificates to bareboat registered vessels and avoiding the co-existence of certificates; assisting in applying the Convention in a uniform manner and providing certainty; and being consistent with Assembly resolution A.1028(26) on the issue of bunkers certificates under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2011.[821] The Committee approved the draft resolution and decided to submit it to the 106th session of the Council for consideration and, thereafter, for submission to the twenty-seventh session of the Assembly, for adoption.

As a separate matter, the Committee discussed the obligation of ships under article 5 of the Nairobi Wreck Removal Convention to report to the affected State any maritime casualty resulting in a wreck in the Convention area, taking into account that the Convention did not, however, identify to which authority the report should be addressed, nor did it oblige States parties to designate a focal point for that purpose. To address this situation, the Committee agreed that States parties should communicate to the Secretariat the names and addresses of focal points in the respective administrations, for inclusion in a suitable database in the Global Integrated Information System (GISIS). In this connection, the Secretariat announced that it would issue a Circular letter to all Members, requesting them to enter the information regarding their national focal points for the Nairobi Wreck Removal Convention into the GISIS database.

c. Crime reporting on passenger ships

The Committee noted the information from the observer delegation of the Cruise Lines International Association (CLIA) concerning the matter of crime reporting on passenger ships in international commerce, taking into account the legislative framework that had been developed in the United States. In so doing, the Committee noted that CLIA was not requesting the Committee to add a new work programme item, rather, it was asking for advice and comments on a range of issues that it might take into account, as it consulted with Governments on whether to introduce such a proposal to a future session as a new work programme item.

(*c*) Amendments to treaties

(i) *2011 amendments (chapter III) to the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended*[822]

Those amendments were adopted by the Maritime Safety Committee on 20 May 2011, by resolution MSC.317(89). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2012 and would into force on 1 January 2013 unless, prior to the former date, more than one third of the Contracting Governments to SOLAS, 1974, or Contracting Governments, the combined merchant fleets of which constituted not less than 50 per cent of the gross tonnage of the

[821] *Ibid*.

[822] United Nations, *Treaty Series*, vol. 1184, p. 2.

world's merchant fleet, had notified their objections to the amendments. As of 31 December 2011, no such notification of objection had been received.

(ii) *2011 amendments to the International Maritime Solid Bulk Cargoes (IMSBC) Code (under SOLAS, 1974)*

Those amendments were adopted by the Maritime Safety Committee on 20 May 2011, by resolution MSC.318(89). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2012 and would enter into force on 1 January 2013 unless, prior to the former date, more than one third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As of 31 December 2011, no such notification of objection had been received.

(iii) *2011 amendments to the International Life-Saving Appliance (LSA) Code (under SOLAS, 1974)*

Those amendments were adopted by the Maritime Safety Committee on 20 May 2011, by resolution MSC.320(89). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2012 and would enter into force on 1 January 2013 unless, prior to the former date, more than one third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As of 31 December 2011, no such notification of objection had been received.

(iv) *2011 amendments (Special Area Provisions and the Designation of the Baltic Sea as a Special Area under MARPOL Annex IV) to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*[823]

Those amendments were adopted by the Marine Environment Protection Committee on 15 July 2011, by resolution MEPC.200(62). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2012 and would enter into force on 1 January 2013 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 constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As of 31 December 2011, no notification of objection had been received.

[823] *Ibid.*, vol. 1340, p. 61.

(v) *2011 amendments (Revised MARPOL Annex V) to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*

Those amendments were adopted by the Marine Environment Protection Committee on 15 July 2011, by resolution MEPC.201(62). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2012 and would enter into force on 1 January 2013 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 constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As of 31 December 2011, no notification of objection had been received.

(vi) *2011 amendments (Designation of the United States Caribbean Sea Emission Control Area and exemption of certain ships operating in the North American Emission Control Area and the United States Caribbean Sea Emission Control Area under regulations 13 and 14 and appendix VII of MARPOL Annex VI) 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*

Those amendments were adopted by the Marine Environment Protection Committee on 15 July 2011, by resolution MEPC.202(62). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2012 and would enter into force on 1 January 2013 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 constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As of 31 December 2011, no notification of objection had been received.

(vii) *2011 amendments (Inclusion of regulations on energy efficiency for ships in MARPOL Annex VI) 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*

Those amendments were adopted by the Marine Environment Protection Committee on 15 July 2011, by resolution MEPC.203(62). At the time of their adoption, the Committee determined that the amendments would be deemed to have been accepted on 1 July 2012 and would enter into force on 1 January 2013 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 constituted not less than 50 per cent of the gross tonnage of the world's merchant fleet, had notified their objections to the amendments. As of 31 December 2011, no notification of objection had been received.

6. Universal Postal Union

The Universal Postal Union (UPU) and the International Confederation for Printing and Allied Industries signed a cooperation renewal agreement on 3 May 2011 in order to cooperate and optimize their philatelic activities through the UPU's World Association for the Development of Philately.

On 11 May 2011, the UPU signed an agreement with the Bill & Melinda Gates Foundation to promote financial inclusion through postal networks. Support from the Gates Foundation permitted the funding of an international bureau expert, together with technical assistance, communications and fundraising activities for designated operators, and an experience-exchange programme between posts.

A memorandum of understanding was signed on 12 May 2011 with the European Telecommunications Standards Institute. The agreement formalized mutual cooperation in areas of common interest dealing with the development of technical standards for secure electronic communications and the interoperability of radio frequency identification systems, and in other similar technical fields.

The memorandum of understanding signed by the UPU and the United Nations Environment Programme (UNEP) in 2008 was updated by the two organizations on 29 October 2011. Within the framework of its cooperation with the UNEP, the UPU invited experts from the "Sustainable United Nations" initiative to participate in work on the issue of climate change, carbon offsetting and the importance of environmental protection by Posts.

On 31 October 2011, the UPU and the International Fund for Agricultural Development signed an agreement for the implementation of two new projects developing postal and social payment services in central Asia and Asia-Pacific after having carried out a first joint project in Africa in the previous years.

7. World Intellectual Property Organization

The World Intellectual Property Organization (WIPO) has nine strategic goals, which provide the framework for WIPO's present strategic plan: (1) maintaining a balanced evolution of the international normative framework for intellectual property (IP); (2) providing premier global IP services; (3) facilitating the use of IP for development; (4) coordinating and developing the global IP infrastructure; (5) becoming a world reference source for IP information and analysis; (6) fostering international cooperation to build respect for IP; (7) addressing IP in relation to global policy issues; (8) creating a responsive communications interface between WIPO, its Member States and all stakeholders; and (9) making an efficient administrative and financial support structure to enable WIPO to deliver its programs.[824]

Acting within those goals, in 2011 WIPO took legal actions that fell within its five Core Tasks, including, developing international IP laws and standards; delivering global IP protection services; encouraging the use of IP for economic development; promoting

[824] World Intellectual Property Organization, Midterm Strategic Plan for WIPO, 2010–2015, document A/48/3. Available from http://www.wipo.int (accessed on 31 December 2011).

a better understanding of IP; and providing a forum for debate.[825] The summary below discusses the Core Tasks and actions WIPO took to help further the global convergence of international IP policy.

(*a*) Core Task I: Developing international IP laws and standards

WIPO continued to be responsible for promoting the balanced evolution of IP legislation, standards and procedures among its Member States.[826]

(i) *Development of a traditional IP law*

Across the world and across all IP subjects, WIPO catalyzed continued IP development on the local, national, and international levels.

In 2011 in particular, WIPO and its Member States made breakthroughs in negotiations relating to audiovisual performances, and planned to hold a diplomatic conference for a new international treaty on the matter in June 2012. Member States also made major advances towards a treaty to improve access to published works for the visually impaired and a treaty for the protection of broadcasting organizations.[827] In the field of trademarks and industrial designs, Member States had made several draft articles for a new design law treaty, and had continued to manage the increasing role of trademark law on the Internet by developing new online trademark databases and arbitrating domain name disputes.

(ii) *Treaty Accessions/Ratifications*

In 2011, 30 new instruments of ratification and accession were received and processed in respect of WIPO-administered treaties. The following figures show the new adherence to the treaties, with the second figure in brackets being the total number of States parties to the corresponding treaty by the end of 2011.

(a) Convention Establishing the World Intellectual Property Organization, 1967[828]: 1 (185);

(b) Paris Convention for the Protection of Industrial Property[829]: 1 (174);

(c) Berne Convention for the Protection of Literary and Artistic Works[830]: 1 (165);

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[825] Available from http://www.wipo.int/about-wipo/en/index.html (accessed on 31 December 2011).

[826] *Ibid.*

[827] *Ibid.* See also World Intellectual Property Organization, "WIPO Member States Advance Toward Treaty to Protect Audiovisual Performances", 29 September 2011 and "Agreement on Transfer of Rights Paves Way to Treaty on Performers' Rights", 24 June 2011. Available from http://www.wipo.int (accessed on 31 December 2011).

[828] United Nations, *Treaty Series*, vol. 828, p. 3.

[829] *Ibid.*, vol. 828, p. 305.

[830] *Ibid.*, vol. 828, p. 221.

(d) Patent Cooperation Treaty[831]: 2 (144);

(e) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks[832]: 1 (84);

(f) Trademark Law Treaty[833]: 3 (49);

(g) Patent Law Treaty[834]: 3 (30);

(h) Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods[835]: (0) 35;

(i) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks[836]: 0 (83);

(j) Locarno Agreement Establishing an International Classification for Industrial Designs[837]: 1 (52);

(k) Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks[838]: 2 (3);

(1) WIPO Copyright Treaty[839]: 1 (89);

(m) WIPO Performances and Phonograms Treaty[840]: 2 (89);

(n) Singapore Treaty on the Law of Trademarks[841]: 2 (25);

(o) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration[842]: 0 (27);

(p) Strasbourg Agreement Concerning the International Patent Classification[843]: 0 (61);

(q) Nairobi Treaty on the Protection of the Olympic Symbol[844]: 1 (49);

(r) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure[845]: 2 (75);

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[831] The full text of the treaty is available from http://www.wipo.int/pct/en/texts/articles/atoc.htm (accessed on 31 December 2011).

[832] United Nations, *Treaty Series*, vol. 828, p. 389.

[833] *Ibid*., vo1. 2037, p. 35.

[834] *Ibid*., vol. 2340, p. 3.

[835] *Ibid*., vol. 828, p. 162.

[836] *Ibid*., vol. 828, p. 191.

[837] *Ibid*., vol. 828, p. 435.

[838] *Ibid*., vol. 1863, p. 317.

[839] *Ibid*., vol. 2186, p. 121.

[840] *Ibid*., vol. 2186, p. 203.

[841] The full text of the treaty is available from http://www.wipo.int/treaties/en/ip/singapore (accessed on 31 December 2011).

[842] United Nations, *Treaty Series*, vol. 923, p. 205.

[843] *Ibid*., vol. 1160, p. 483.

[844] *Ibid*., vol. 1863, p. 367.

[845] *Ibid*., vol. 1861, p. 361.

(s) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations[846]: 0 (91);

(t) Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs[847]: 4 (59);

(u) Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite[848]: 1 (34);

(v) Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms[849]: 0 (77);

(w) International Convention for the Protection of New Varieties of Plants (UPOV)[850]: and 2 (68).

(iii) *Intergovernmental Committee on traditional knowledge, traditional cultural expressions and genetic resources*

In addition to the traditional areas of IP protection such as copyright and patent, the WIPO General Assembly in 2000 established the intergovernmental committee and made it a goal of the Organization to pursue protection for the economic and cultural assets of indigenous and local communities and their countries.[851] According to Director-General Francis Gurry, "great progress" had been made within the intergovernmental committee in 2011, which had actively negotiated and prepared texts for future agreements to protect traditional knowledge, traditional cultural expressions, and genetic resources.[852]

(*b*) Core Task II: Delivering global IP protection services

WIPO continued to provide fee-based services, based on international agreements, which enabled users in Member States to enjoy international protection of their IP within a single centralized framework.[853]

(i) *The Patent Cooperation Treaty (PCT), Madrid, Hague and Lisbon Systems*

The PCT made it possible to seek patent protection in a large number of States simultaneously by filing a central international patent application. The PCT was concluded in

[846] *Ibid*., vol. 496, p. 43.

[847] *Ibid*., vol. 2279, p.3.

[848] *Ibid*., vol. 1114, p. 3.

[849] *Ibid*., vol. 866, p. 67.

[850] *Ibid*., vol. 1861, p. 281.

[851] Available from http://www.wipo.int/tk/en/ (accessed on 31 December 2011).

[852] World Intellectual Property Organization, General Report of the Forty-Ninth Series of Meetings (26 October-5 October 2011), document A/49/18, p. 12. Available from http://www.wipo.int (accessed on 31 December 2011).

[853] Available from http://www.wipo.int/about-wipo/en/index.html (accessed on 31 December 2011).

1970[854] and had since grown to 144 contracting States as of 31 December 2011.[855] While in 2009, PCT filings decreased as a result of the economic downturn, in 2011 the number of filings seemed to have recovered. Provisional data from 2011 showed 145,877 PCT filings between January and October of 2011 compared to 127,361 filings in 2009 and 133,071 filings in 2010 over the same ten-month period.[856] In addition, 2011 served as a landmark year for the PCT system—in April 2011, Qualcomm filed the two millionth PCT patent.[857]

The Madrid and Hague systems also offered central filing locations for trademarks and industrial designs, respectively. The Madrid and Hague systems, like the PCT system, showed a growth in 2011 compared to the previous years: in 2011 the Madrid System for trademarks saw 40,711 new registrations, compared to 37,533 in 2010 and 35,925 in 2009.[858] Meanwhile in 2011, the Hague System for industrial designs showed 2564 new published registrations, compared to 2089 in 2010 and 1518 in 2009.[859]

Finally, the Lisbon System offered a central filing location for appellations of origin. Appellations of origin were not as plentiful—as of the end of 2011, only 900 appellations of origin had been filed since its entry into force in 1958.[860] In 2011, three new appellations of origin were filed: one by Mexico, one by Serbia, and one by Costa Rica.

(ii) *Arbitration, mediation and domain names*

To ensure dispute resolution transparency and predictability, WIPO completed in 2011 the WIPO Overview 2.0 project, which analyzed the evolving Uniform Domain Name Resolution Policy (UDRP) jurisprudence on certain questions that commonly arose in UDRP proceedings. While that jurisprudence was not binding on future UDRP resolutions, a clear majority view had developed around some issues, and the explanation of the reasoning behind those issues was easily accessible and consolidated on the WIPO website.[861] In addition to compiling the UDRP jurisprudence, WIPO continued to provide trademark-based domain name policy input to Internet Corporation for Assigned Names and Numbers (ICANN) stakeholders, especially regarding the global emergence of

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[854] Available from http://www.wipo.int/pct/en/treaty/about.html (accessed on 31 December 2011).

[855] Available from http://www.wipo.int/pct/en/ (accessed on 31 December 2011).

[856] World Intellectual Property Organization, The International Patent System: Monthly Statistics Report (April, 2012). Available from http://www.wipo.int (accessed on 31 December 2011).

[857] *Ibid*., "International Patent System Marks Two Millionth Filing—U.S. Mobile Technology Innovator, Qualcomm, files Landmark Application", 14 April 2011. Available from http://www.wipo.int (accessed on 31 December 2011).

[858] Available from http://www.wipo.int/madrid/en/statistics/general_stats.jsp (accessed on 31 December 2011).

[859] World Intellectual Property Organization, International registrations, International Designs Bulletin database. Available from http://www.wipo.int/hague/en/bulletin/ (accessed on 31 December 2011).

[860] *Ibid*., Draft Report of the Working Group on the Development of the Lisbon System (Appellations of Origin)(12–16 December 2011), document LI/WG/DEV/4/7 PROV. Available from http://www.wipo.int (accessed on 31 December 2011).

[861] Available from http://www.wipo.int (accessed on 31 December 2011).

domain names in local language scripts (such as .قطر (Qatar) and .امارات (United Arab Emirates),[862] and new generic top-level domains (gTLDs).[863]

(*c*) Core Task III: Encouraging the use of IP for economic development

WIPO conducted a range of programs aimed at increasing the effective use of the IP system by developing countries to promote economic, social and cultural development.[864] Core Task III represented efforts made to use IP not as an end in and of itself but rather as a tool that could power States' growth and development.[865]

Committee on Development and Intellectual Property (CDIP)

At the seventh session of the CDIP from 2 to 6 May 2011, the CDIP discussed among other things flexibilities of IP law, the strength of the public domain, the effect of "brain drain" on IP development, and the South-South cooperation that has emerged in efforts to converge international IP law among developing nations and the Least Developed Countries.

At the eighth session of the CDIP from 14 to 18 November 2011, the CDIP discussed among other things the possibility of an external review of WIPO technical assistance, the feasibility of national patent register databases and linkage to the WIPO-administered international database PATENTSCOPE, the strength of the public domain, the interface between intellectual property rights and competition law, and the influence of intellectual property in the context of the informal economy.

(*d*) Core Task IV: Actions promoting a better understanding of IP

WIPO provided public outreach material aimed at encouraging creativity and innovation; and increasing understanding of how to protect and benefit from the resulting IP.[866] WIPO also provided an online infrastructure for accessing information.

(i) *Building respect for IP*

Recent WIPO activities aimed toward building respect for IP included giving assistance to Member States in the form of legislative advice, training, and awareness-raising; promoting international coordination and cooperation through various international organizations and Member States; and publicizing information about IP not only to Mem-

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[862] World Intellectual Property Organization, "Cybersquatting Hits Record Level, Wipo Center Rolls out New Services", 31 March 2011. Available from http://www.wipo.int (accessed on 31 December 2011).

[863] *Ibid*., WIPO Arbitration and Mediation Center, Including Internet Domain Names (26 September-5 October 2011), document WO/GA/40/9. Available from http://www.wipo.int (accessed on 31 December 2011).

[864] Available from http://www.wipo.int/about-wipo/en/index.html (accessed on 31December 2011).

[865] Available from http://www.wipo.int/ip-development/en/ (accessed on 31 December 2011).

[866] Available from http://www.wipo.int/about-wipo/en/index.html (accessed on 31 December 2011).

ber States, but to individuals and other non-state entities as well.[867] In addition, WIPO attempted to build respect for IP by confronting directly global issues in counterfeiting and piracy.[868]

From 30 November to 1 December 2011, the seventh session of the Advisory Committee on Enforcement reviewed statistical information on counterfeiting and piracy, investigated methodologies to quantify the socio-economic impact of counterfeiting and piracy, and examined challenges on counterfeiting and piracy involving African countries in particular.[869]

On 2 and 3 February 2011, WIPO chaired the Sixth Global Congress on Combating Counterfeiting and Piracy. Over 800 delegates from intergovernmental organizations, national governments, enforcement agencies and businesses convened to address the global impact of the growing trade in counterfeit and pirated goods.[870]

(ii) *Facilitating access to IP*

In addition to building respect for IP, WIPO sought to facilitate access to IP by establishing Technology and Innovation Support Centers (TISCs) to provide innovators in developing countries with access to locally based, high quality technology information services;[871] producing publications, such as the WIPO magazine, to disseminate knowledge about IP to the public;[872] and providing online search services through WIPO Gold to allow inventors and entrepreneurs to find information about national IP laws, treaties, and internationally registered IP.[873] In 2011, particular advancements were made with Small and Medium-Sized Enterprises, medical databases, and trademark databases.

a. Small and Medium-Sized Enterprises

In October 2000, WIPO Member States endorsed a proposal to establish a substantial new program of activities focusing on the intellectual property-related needs of SMEs worldwide. As a result, in 2011, SME training programs were held in Damascus, Riyadh, Kuala Lumpur, Colombo, and Doha, and the Ninth Annual WIPO Forum on Intellectual

[867] World Intellectual Property Organization, Recent activities of WIPO in the field of building respect for intellectual property (IP) (30 November-1 December 2011), document WIPO/ACE/7/2. Available from http://www.wipo.int (accessed on 31December 2011).

[868] Available from http://www.wipo.int (accessed on 31 December 2011).

[869] *Ibid*.

[870] World Intellectual Property Organization, "Global Anti-Counterfeiting and Piracy Congress to Meet in Paris", 12 January 2011 and "Sixth Global Congress on Combating Counterfeiting and Piracy Opens in Paris", 2 February 2011. Available from http://www.wipo.int (accessed on 31 December 2011).

[871] *Ibid*., Technology and innovation support centers—TISCs: Enhancing innovation through technology and expertise. Available from http://www.wipo.int (accessed on 31 December 2011).

[872] Available from http://www.wipo.int/ip-outreach/en/publications/index.html (accessed on 31 December 2011).

[873] Available from http://www.wipo.int/wipogold/en/ (accessed on 31 December 2011).

Property and Small and Medium Sized Enterprises was held in Munich on 19 and 20 October.[874]

b. Re:Search Medical database

In October 2011, WIPO launched WIPO Re:Search, a new public database of IP, that gave researchers royalty-free access to proprietary information for researching treatments for neglected tropical diseases, malaria, and tuberculosis, and royalty-free sales to LDCs of any medicines made from that research for neglected tropical diseases.[875] Founded by a consortium of public institutions, non-profit research organizations, and large pharmaceutical companies, WIPO Re:Search built on previous research and development (R&D) investments to speed the development of drugs for neglected diseases.[876]

c. Trademark databases

On 20 December 2010, WIPO launched the Madrid System Goods and Services Manager (G&S Manager) to help trademark applicants file an international trademark application under the Madrid System. The G&S Manager gave the applicant thousands of internationally-recognized trademark classifications to choose from and allowed the applicant to select which classifications best suit his or her product line. The availability of pre-defined, agreed-upon classifications ensured that the applicants would not have an irregular application.[877]

Afterwards, on 4 March 2011, WIPO launched the Global Brand Database, which allowed free of charge simultaneous brand-related searches across multiple collections. Records of internationally-recognized trademarks, appellations of origin, armorial bearings, flags, and other state emblems as well as the names, abbreviations and emblems of intergovernmental organizations all were consolidated in a central location and easily accessible to the public.[878]

(*e*) Core Task V: Actions providing a forum for debate

WIPO continued to hold standing committees for patents, copyright, and trademarks, and convenes other conferences and committees to address contemporary global issues such as global climate change.

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[874] Available from http://www.wipo.int/sme/en/activities/activities_2011.html (accessed on 31 December 2011).

[875] World Intellectual Property Organization, "Leading Pharmaceutical Companies and Research Institutions Offer IP and Expertise for use in Treating Neglected Tropical Diseases as Part of WIPO Re:Search", 26 October 2011. Available from http://www.wipo.int (accessed on 31 December 2011).

[876] *Ibid*.

[877] *Ibid*., "WIPO Launches On-line Tool to Assist in Filing International Trademark Applications", 20 December 2010. Available from http://www.wipo.int (accessed on 31 December 2011).

[878] *Ibid*., "WIPO Launches New On-line Tool to Facilitate Brand Searches", 8 March 2011. Available from http://www.wipo.int (accessed on 31 December 2011).

(i) *Standing Committee on the Law of Patents (SCP)*

The sixteenth session of the SCP was held from 16 to 20 May 2011. The SCP discussed the present legal and global developments in exceptions and limitations to patent rights, the quality of patents (including opposition systems), confidentiality of communications between clients and their patent advisors, patents and health, client-patent advisor privilege, and the transfer of technology.[879] Those topics were also discussed at the seventeenth session of the SCP, from 5 to 9 December 2011, and would remain on the agenda of the eighteenth session of the SCP that would be held in May or June 2012.[880]

(ii) *Standing Committee on the Law of Trademarks, Industrial Designs and Geographic Indications (SCT)*

The twenty-fifth session of the SCT was held from 28 March to 1 April 2011. In the context of industrial designs, the SCT progressed towards holding a diplomatic conference for the adoption of a design law treaty, "Industrial Design Law and Practice". In the context of trademarks, the SCT discussed trademarks and the Internet, particularly as it related to ICANN, and also the subject of protecting the names of States against use as trademarks.[881]

The twenty-sixth session of the SCT was held from 24 to 28 October 2011, and again from 1 to 3 February 2012. In the context of industrial designs, the SCT continued preparations for a diplomatic conference for the adoption of a design law treaty. The SCT discussed several draft articles and regulations that could possibly be incorporated into that treaty, and also how that treaty related to the WIPO Development Agenda. In the context of trademarks, the SCT further discussed ICANN, the expansion of the domain name system, and the protection of names of States against registration and use as trademarks, and also the roles of Internet intermediaries in trademark protection and their responsibilities in trademark violations.[882]

(iii) *Standing Committee on the Law of Copyright and Related Rights (SCCR)*

The twenty-second session of the SCCR was held from 15 to 21 June 2011. The SCCR paid considerable attention to various articles of the proposed WIPO Treaty for the Protection of Audiovisual Performances and the WIPO Draft Treaty for the Protection of Broadcasting Organizations. The SCCR also discussed copyright limitations and exceptions when applied to the visually impaired and other individuals with print disabilities

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[879] *Ibid*., Summary of the Chair of the Sixteenth Session of the Standing Committee on the Law of Patents (16–20 May 2011), document SCP 16/8. Available from http://www.wipo.int (accessed on 31 December 2011).

[880] *Ibid*., Summary of the Chair of the Seventeenth Session of the Standing Committee on the Law of Patents (5–9 December 2011), document SCP 17/2. Available from http://www.wipo.int (accessed on 31 December 2011).

[881] *Ibid*., Report of the Twenty-Fifth Session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (28 March-1 April 2011), document SCT/25/7. Available from http://www.wipo.int (accessed on 31 December 2011).

[882] Available from http://www.wipo.int (accessed on 31 December 2011).

and created a draft treaty, the Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives. The SCCR also considered the results of various studies and regional conferences relating to the protection of audiovisual performances and broadcasting organizations, including the conclusions of the Regional Broadcasting Signal Piracy Seminar held in Johannesburg, South Africa, from 6 to 7 June 2011.[883]

The twenty-third session of the SCCR was held 21 to 25 and 28 to 29 November and 2 December 2011. The SCCR continued to work towards developing an international treaty to update the protection of broadcasting and cablecasting organizations, and planned a diplomatic conference on audiovisual performances to be held in Beijing from 20 to 26 June 2012.[884] The Committee also considered further limitations and exceptions of copyright as applied to both libraries/archives and visually impaired persons/persons with print disabilities. For libraries in particular, those factors would be used to finalize a proposal on a treaty during the twenty-fourth session of the SCCR.[885]

(iv) *Conference on Innovation and Climate Change*

From 11 to 12 July 2011, WIPO hosted the Conference on Innovation and Climate Change, an international conference to address the role of innovation and technology in the development of green technologies to provide solutions to the challenges posed by climate change. The Conference brought together major stakeholders, including international organizations, government, industry, and civil society, to discuss innovation partnerships between the public and private sector to develop and diffuse technologies.[886]

8. International Fund for Agricultural Development

(*a*) Membership

The Republic of Uzbekistan and the Republic of Hungary became members of International Fund for Agricultural Development (IFAD) in 2011. The applications for membership presented by the Republic of Uzbekistan were approved by Resolution 159/XXXIV of the Governing Council at its thirty-fourth session (19 and 20 February 2011).[887]

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[883] *Ibid*.

[884] *Ibid*.

[885] *Ibid*.

[886] World Intellectual Property Organization, "WIPO Conference to Address Role of Innovation in Meeting Climate Change Challenges", 8 July 2011. Available from http://www.wipo.int (accessed on 31 December 2011).

[887] See International Fund for Agricultural Development, document GC 34/Resolutions, p. 2. Available from http://www.ifad.org/gbdocs/gc/34/e/GC-34-resolutions.pdf (accessed on 31 December 2011).

(*b*) Other resolutions

(i) *Establishment of the Consultation on the Ninth Replenishment of IFAD's Resources (Resolution 160/XXXIV)*[888]

The Governing Council decided that (a) a Consultation on the Ninth Replenishment of IFAD's Resources ("The Consultation") should be established, chaired by Mr Johannes F. Linn, to review the adequacy of the Fund's resources and to report to the Governing Council. The tasks of the chair of the Consultation were annexed to that resolution; (b) the first session of the Consultation would be held on 21 February 2011; (c) the Consultation would consist of all Member States from Lists A and B and 18 Member States from List C, the latter would be appointed by the members of List C and communicated to the President no later than 20 February 2011. The Consultation could subsequently invite such other Member States to participate in the Consultation as might facilitate its deliberations; (d) the Consultation would submit a report on the results of its deliberations and any recommendations thereon to the thirty-fifth session and, if required, subsequent sessions of the Governing Council, with a view to adopting such resolutions as might be appropriate; (e) the President was requested to keep the Executive Board informed of the progress of the deliberations of the Consultation; (f) the President and the staff were requested to provide such assistance to the Consultation as might be necessary for the effective and efficient discharge of its functions.

(ii) *Administrative and capital budgets of IFAD for 2011, Ninth Replenishment budget, extraordinary compensatory budget for the 2011 Governing Council and administrative budget of the IFAD Office of Evaluation for 2011 (Resolution 161/XXXIV)*[889]

The Governing Council approved the administrative budget of IFAD for 2011 in the amount of US$140.59 million, the capital budget of IFAD for 2011 in the amount of US$15.19 million, the Ninth Replenishment budget in the amount of US$2 million, the extraordinary compensatory budget for the 2011 Governing Council in the amount of US$0.49 million and the administrative budget of the IFAD Office of Evaluation for 2011 in the amount of US$5.88 million, as set forth in document GC 34/L.6, determined on the basis of a rate of exchange of EUR 0.72/US$1.00.

The Governing Council determined that in the event the average value of the United States dollar in 2011 changed against the euro rate of exchange used to calculate the budget, the total United States dollar equivalent of the euro expenditures in the budget would be adjusted in the proportion that the actual exchange rate in 2011 bore to the budget exchange rate; and approved that unobligated appropriations at the close of the financial year 2010 for country programme development and implementation might be carried forward into the 2011 financial year up to an amount that did not exceed 6 per cent of the corresponding appropriations.

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[888] *Ibid*., p. 3.

[889] *Ibid*., p. 5.

(iii) *Extension of the appropriation of the special expenditure for the Voluntary Separation Programme for IFAD for 2011 (Resolution 162/XXXIV)*[890]

The Governing Council decided that the extension of the appropriation of the special expenditure for the Voluntary Separation Programme for IFAD for 2011, as contained in document GC 34/L.7, was approved and requested the President to submit a final report including expenditures to the Governing Council in February 2012.

(iv) *Re-establishment of a Committee to review the emoluments of the President (Resolution 163/XXXIV)*[891]

The Governing Council decided (i) to re-establish an emoluments committee to review the overall emoluments and other conditions of employment of the President of IFAD. The committee would submit to the thirty-sixth session of the Governing Council, through the Executive Board, a report thereon together with a draft resolution on the subject for adoption by the Governing Council; (ii) the committee should consist of nine Governors (four from List A, two From List B and three form List C) or their representatives to be nominated by the Chairperson pursuant to rule 15.2 of the Rules of Procedure of the Governing Council; and (iii) the committee should be provided with specialist staff to offer such support and advice as the committee might require.

(*c*) Other legal activities

(i) *IFAD's Environment and Natural Resource Management Policy*

At its one hundred and second session, held from 10 to 12 May 2011, the Executive Board approved the Environment and Natural Resource Management Policy overall, to be implemented in accordance with the implementation strategy in section III of the document, and the results and implementation framework provided in annex II of the document.[892]

(ii) *IFAD Country Presence Policy and Strategy*

During its one hundred and second session, the Executive Board approved the policy to establish country offices, with a cap of 40, where they could contribute to improved development effectiveness and cost efficiency in recipient countries; adopted a medium term strategy to establish 10 additional country offices by the end of 2013; and five new country offices were to be established in 2011, as proposed in the budgetary framework approved by the Board.[893]

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[890] *Ibid*., p. 7.

[891] *Ibid*., p. 8.

[892] *Ibid*., document EB 2011/102/R.9. Available from http://www.ifad.org/gbdocs/eb/102/e/EB-2011–102-R-9.pdf (accessed on 31 December 2011).

[893] *Ibid*., documents EB 2010/101/R.2/Rev.1, EB 2011/102/R.10, EB 2011/102/R.10/Add.1, EB 2011/102/R.10/Rev.1, EB 2011/102/R.10/Add.2 and EB 2010/101/R.2/Rev.1. Available from http://www.ifad.org (accessed on 31 December 2011).

(iii) *IFAD Policy for Grant Financing*

Also during its one hundred and second session, the Executive Board approved a Corporate Strategic Workplan for Grant Financing[894] and procedures for Financing from the Grants Programme were presented to the Board for information purposes.[895]

9. United Nations Industrial Development Organization

(*a*) Constitutional matters

With the accession of Tuvalu to the Constitution of the United Nations Industrial Development Organization (UNIDO), 174 States were members of UNIDO by the end of 2011.

The General Conference decided to include Tuvalu in List A of Annex I to the Constitution, at its 1st plenary meeting on 28 November 2011.[896]

On 27 April and 29 December 2011, the United Kingdom of Great Britain and Northern Ireland and the Republic of Lithuania, respectively, deposited instruments of denunciation of the Constitution of UNIDO. In accordance with article 6(2) of the Constitution, the denunciations would take effect on the last day of fiscal year following that during which such instruments were deposited, i.e., on 31 December 2012.

(*b*) Agreements and other arrangements concluded in 2011[897]

(i) *Agreements with States*[898]

Bahrain

Exchange of letters extending the agreement between UNIDO and the Government of the Kingdom of Bahrain to finance the activities of the UNIDO Investment and Technology Promotion Office (ITPO) in Bahrain up to 2013, signed on 17 December 2010 and 10 February 2011.

Bolivia (Plurinational State of) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women)

Letter of agreement between UNIDO, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the Ministry for Productive Sector Development and the Plural Economy of the Government of the Plurinational State of Bolivia, signed on 12 October 2011.

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[894] *Ibid*., document EB 2011/102/R.27. Available from http://www.ifad.org (accessed on 31 December 2011).

[895] *Ibid*., document EB 2011/102/R.28. Available from http://www.ifad.org (accessed on 31 December 2011).

[896] GC.14/Dec.1: Inclusion of Member States in the lists of States of annex I to the Constitution of UNIDO.

[897] The list contains signed agreements or arrangements deposited with the Office of Legal Affairs of UNIDO for safekeeping.

[898] Including governments and regional governments or provinces.

Canada

Amendment No. 1 to the grant arrangement between UNIDO and the Government of Canada concluded on 19 March 2009 regarding the implementation of a project in the Sudan entitled "Recovery of coastal livelihoods in the Red Sea State of Sudan—the modernization of artisanal fisheries and creation of new market opportunities", signed on 22 and 31 August 2011.

China

Memorandum of understanding between UNIDO and the Foreign Economic Cooperation Office, Ministry of Environmental Protection of the People's Republic of China (FECO), signed on 2 September and 8 October 2011.

Memorandum of understanding between UNIDO and China International Center for Economic and Technical Exchanges, Ministry of Commerce, the People's Republic of China, signed on 28 November 2011.

Costa Rica

Agreement between UNIDO and the Government of the Republic of Costa Rica regarding settlement of outstanding assessed contributions under a payment plan, signed on 30 November 2011.

France

Agreement between the UNIDO and the City of Marseille regarding the United Nations Industrial Development Organization Investment and Technology Promotion Office (ITPO) in Marseille, signed on 23 May and 17 June 2011.

Grant Agreement No. 2011–209–224 between UNIDO and the Ministry of Foreign and European Affairs of the Government of France, represented by the Embassy of France in Algeria regarding the implementation of a project in Algeria entitled "Establishment and development of export consortia of industrial enterprises in the food production and processing sector", signed on 26 September and 24 October 2011.

Agreement between UNIDO and the French Development Agency regarding the initiative for the development of agribusiness and agro-industries in Africa, signed on 13 and 15 December 2011.

Indonesia and the United Nations

Memorandum of understanding between the Government of the Republic of Indonesia and the United Nations System[899] on the framework for cooperation with and support for the Indonesian national reducing emissions from deforestation and forest degradation (REDD)+ programme in the Republic of Indonesia, signed on 20 September 2011.

[899] Refers to United Nations agencies, funds and programmes.

Kuwait

Agreement between UNIDO and the Public Authority for Industry, State of Kuwait, regarding the implementation of a project in Kuwait entitled "Strengthening export capacities of manufacturing small and medium sized enterprises (SMEs) in Kuwait", signed on 6 and 18 July 2011.

Italy

Trust fund agreement between UNIDO and the Government of the Republic of Italy regarding the implementation of a project in Argentina entitled "Phase-out of HCFC-22 in the room and unitary air-conditioning equipment manufacturing sector", signed on 25 January and 8 February 2011.

Trust fund agreement between UNIDO and the Directorate General for Development Cooperation of the Ministry of Foreign Affairs of the Republic of Italy regarding the implementation of a project in South Africa entitled "Partner in an Italian funded programme in South Africa working on human immunodeficiency virus (HIV) and local production of pharmaceuticals", signed on 9 November 2011.

Mozambique and the European Union

Addendum No. 3 to the European Union contribution agreement between UNIDO, the European Union and the Government of Mozambique regarding the implementation of a project entitled "Business environment support and trade facilitation project", signed on 4 January, 11 and 15 August 2011.

Norway

Administrative agreement for project funding between UNIDO and the Norwegian Agency for Development Cooperation (Norad) GLO-3256 QZA-11/0160 regarding the implementation of a project entitled "Trade standards compliance report (TSCR)", signed on 1 and 7 March 2011.

Administrative agreement for project funding between UNIDO and the Norwegian Agency for Development Cooperation (Norad) GLO-3256 RAS-11/0028 regarding the implementation of a project entitled "Trade capacity-building in the Mekong Delta countries of Cambodia and Lao People's Democratic Republic through strengthening institutional and national capacities related to standards, metrology, testing and quality (SMTQ) phase III", signed on 26 and 28 September 2011.

Republic of Korea

Memorandum of understanding between UNIDO and the Ministry of Knowledge Economy of the Republic of Korea regarding the promotion of green growth and low-carbon industrial development, signed on 22 March 2011.

Republic of South Sudan

Exchange of letters between UNIDO and the Republic of South Sudan regarding the continuation of UNIDO operations in the Republic of South Sudan, signed on 9 July 2011.

Sudan

Terms of Reference for a UNIDO-Sudan Committee, signed by the Director-General of UNIDO and the Minister of Industry of the Republic of the Sudan on 21 March and 14 April 2011.

Sweden

Agreement between UNIDO and Sweden, represented by the Swedish International Development Cooperation Agency regarding the implementation of a project entitled "Trade capacity-building trust fund 2011", signed on 18 and 25 October 2011.

Agreement between UNIDO and Sweden, represented by the Swedish International Development Cooperation Agency regarding the implementation of a project in Ukraine entitled "Horlivka chemical plant remediation", signed on 8 and 9 December 2011.

Agreement between UNIDO and Sweden, represented by the Swedish International Development Cooperation Agency regarding the implementation of a project in Iraq entitled "Strengthening the national quality infrastructure to facilitate trade and enhance consumer protection", signed on 14 December 2011.

Switzerland

Letter of agreement between UNIDO and the State Secretariat for Economic Affairs (SECO) regarding the implementation of a project in Ukraine entitled "Promoting the adaption and adoption of resource efficient and cleaner production through the establishment and operation of a cleaner production centre in Ukraine", signed on 15 and 18 November 2011.

Letter of agreement between UNIDO and SECO regarding the implementation of a project entitled "Global UNIDO-UNEP programme on resource efficient cleaner production in developing and transition countries", signed on 15 and 18 November 2011.

Turkey

Memorandum of understanding between UNIDO represented by the International Centre for Hydrogen Energy Technologies and the Governorship of Bozcaada, signed on 23 May 2011.

Turkmenistan

Working agreement between UNIDO and the Government of Turkmenistan regarding the implementation of a project in Turkmenistan entitled "Technical assistance for the elimination of methyl bromide in post harvest sector in Turkmenistan", signed on 14 June 2010 and 5 January 2011.

Ukraine

Agreement between UNIDO and the Government of Ukraine regarding settlement of outstanding assessed contributions under payment plan, signed on 28 November 2011.

United Kingdom of Great Britain and Northern Ireland

Grant agreement between UNIDO and the Department for International Development regarding the implementation arrangements of a project in South Africa entitled "Industrial energy efficiency improvement in South Africa", signed on 23 and 24 February 2011.

Uruguay

Trust fund agreement between UNIDO and the Ministry of Industry, Energy and Mining of the Eastern Republic of Uruguay regarding the implementation of a project in Uruguay entitled "Modular Agro-Industrial Centre of Excellence in Industrial Automation and Mechatronics", signed on 29 December 2011.

(ii) *Agreements concluded with the United Nations, its programmes and offices, and the specialized agencies*

Multilateral agreements and arrangements

Framework agreement between the Swiss Confederation, acting through the State Secretariat for Economic Affairs of Switzerland (SECO) and the United Nations Conference on Trade and Development (UNCTAD), the International Trade Centre (ITC), UNIDO, the International Labour Organization (ILO) and the United Nations Office for Project Services (UNOPS) on the implementation of interagency trade-related assistance in selected Least Developed Countries (LDCs), signed on 9 May 2011.

Memorandum of understanding between the recipient United Nations organizations and the United Nations Development Programme regarding the operational aspects of the peacebuilding fund, signed by UNIDO on 8 March 2011.

Memorandum of understanding between participating United Nations organizations and the United Nations Development Programme regarding the Libya Recovery Trust Fund (LRTF), signed by UNIDO on 29 November 2011.

Food and Agriculture Organization (FAO)

Inter-agency agreement between UNIDO and FAO of the United Nations regarding the implementation of a project in the Republic of South Sudan entitled "Sustainable food security through community-based livelihood development and water harvesting", signed on 5 and 22 July 2011.

Inter-agency agreement between UNIDO and FAO of the United Nations regarding the implementation of a project in Sudan entitled "Sustainable food security through community-based livelihood development in South Kordofan", signed on 5 and 22 July 2011.

International Fund for Agricultural Development (IFAD)

Grant agreement between UNIDO and IFAD, dated 3 February, regarding the implementation of a project entitled "Youth as catalysts for small scale agri-business development and growth in Western and Central Africa", signed on 7 February and 31 May 2011.

Agreement between UNIDO and IFAD regarding the Financial and Administrative Framework for the establishment of the Technical Assistance Facility (TAF) of the African Agricultural Fund (AAF), signed on 1 and 12 December 2011.

International Labour Organization (ILO)

Agreement between UNIDO and the ILO regarding the implementation of a project in the Comoros entitled "Support for the establishment of lasting peace through the promotion of employment for young persons and women in Comoros (APROJEC)", signed on 26 and 29 April 2011.

Amendment N0.1 to the agreement between UNIDO and the ILO concluded on 26 and 29 April 2011 regarding the implementation of a project in the Comoros entitled "Support for the establishment of lasting peace through the promotion of employment for young persons and women in Comoros (APROJEC)", signed on 23 December 2011.

United Nations Development Programme (UNDP)

Amendment of the memorandum of understanding between UNIDO and UNDP concluded on 28 July 2010 regarding occupancy and use of common premises by the United Nations agencies, programmes, funds and offices at Buenos Aires, Argentina, signed on 14 February 2011.

Standard letter of agreement between UNIDO and UNDP regarding the implementation of a project in Montenegro entitled "Strategy of sustainable economic growth of Montenegro through introduction of clusters by the end of 2016", signed on 29 September 2011.

World Bank Group

International Bank for Reconstruction and Development (IBRD)

Agreement between UNIDO and IBRD to reimburse IBRD for the externally financed output of the project entitled "African competitiveness in light manufacturing products", signed on 13 and 20 January 2011.

World Trade Organization (WTO)

Implementation assignment between UNIDO and the WTO regarding the implementation of a project entitled "Establishment of a National Cinnamon Training Academy (NCTA) for cinnamon processors in Sri Lanka", signed on 6 and 14 June 2011.

World Tourism Organization (UNWTO)

Amendment to the letter of agreement between UNIDO and the UNWTO concluded on 6 August and 2 September 2010 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 15 and 23 August 2011.

(iii) *Agreements concluded with other intergovernmental organizations*

African Caribbean and Pacific Group of States (ACP)

Memorandum of understanding between UNIDO and the Secretariat of the ACP, signed on 24 March 2011.

Relationship agreement between UNIDO and the Secretariat of the ACP, signed on 28 November 2011.

European Union (EU)

Contribution agreement between UNIDO and the EU regarding the implementation of a project entitled "Capacity-building of investment promotion agencies (IPAs) in sub-Saharan Africa", signed on 6 and 10 May 2011.

Addendum No. 2 to the contribution agreement No. ASIE/2007/141–337 between the EU and UNIDO regarding the implementation of a project entitled "UNIDO technical assistance to EC-Nepal WTO assistance programme", signed on 6 and 13 September 2011.

Contribution agreement between UNIDO and the EU, represented by the Delegation of the European Union to Ukraine, regarding the implementation of a project in Ukraine entitled "Horlivka chemical plant remediation", signed on 13 and 19 December 2011.

Contribution agreement between UNIDO and the EU regarding the implementation of a project entitled "Reducing the impact of toxic pollution on the environment and health of vulnerable communities", signed on 19 and 22 December 2011.

European Union and the West African Economic and Monetary Union (UEMOA)

Addendum No. 4 to the contribution agreement between UNIDO, the European Community and the UEMOA regarding the implementation of a project entitled "Support for competitiveness and harmonization of technical barriers to trade (TBT) measures and sanitary and phyto-sanitary (SPS) measures", signed on 20, 27 and 29 December 2011.

Gulf Organization for Industrial Consulting (GOIC)

Joint declaration between UNIDO and the GOIC, signed on 20 June 2011.

Council of the Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States (IPA CIS)

Joint declaration between the UNIDO and IPA CIS, signed on 17 May 2011.

10. World Trade Organization

(*a*) Membership

(i) *General*

As of 31 December 2011, there were 153 members in the World Trade Organization (WTO). Applications for WTO membership were examined in individual Accession Working Parties, established by the WTO General Council. The legal framework of WTO

Accessions was set out in Article XII of the Marrakesh Agreement Establishing the World Trade Organization.[900] Special Guidelines for Least-developed Countries' Accessions were set out in General Council Decision of 10 December 2002.[901] As a result of bilateral and multilateral negotiations with WTO members, Acceding Governments undertook trade liberalizing commitments on market access; specific commitments with respect to WTO rules; and agreed to comply with the WTO Agreement.

(ii) *Ongoing accessions*

The following Governments were 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. Libya
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*

* Least developed countries (LDCs) (12)

Of these 30 Acceding Countries or Separate Customs Territories:

- 21 Acceding Governments had submitted a Memorandum on the Foreign Trade Regime—a key document containing the factual information needed for activating the work of the Working Party and establishing the specific (multilateral) commitments of the Acceding Countries or Separate Customs Territories;
- 19 Working Parties had held their first meeting;
- 16 Acceding Governments had tabled their offers on goods and/or services to initiate bilateral market access negotiations with interested members;

[900] United Nations, *Treaty Series*, vol. 1867, p. 3.

[901] World Trade Organization, document WT/L/508. Work on those Guidelines was continuing, pursuant to the Decision taken at the Eighth World Trade Organization Ministerial Conference as contained in document WT/L/846, in order to "develop recommendations to further strengthen, streamline and operationalize the 2002 guidelines".

- Three Accession Working Parties were advancing on the basis of a Factual Summary;
- Nine Accession Working Parties were advancing on the basis of a Draft Working Party Report; and,
- Four Accession Working Parties had completed their mandates and the respective Accession Packages had been approved by the General Council (Vanuatu[902]) and the Ministerial Conference (Montenegro;[903] the Russian Federation;[904] and Samoa[905]). Those four Acceding Countries would become members of the WTO thirty days after notifying the Secretariat of the domestic ratification of their Accession Packages.

(*b*) Dispute settlement

The General Council convened as the Dispute Settlement Body (DSB) to deal with disputes that arose under any agreement annexed to the Final Act of the Uruguay Round, namely, the Marrakesh Agreement Establishing the World Trade Organization; the multilateral trade agreements covering trade in goods, trade in services, and trade-related aspects of intellectual property rights; and the two plurilateral trade agreements covering trade in civil aircraft and government procurement. The DSB had the sole authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance over the implementation of recommendations and rulings contained in such reports, and authorize suspension of concessions in the event of non-compliance with those recommendations and rulings.

During 2011, eight requests for consultations (the first formal step in dispute settlement proceedings) were received pursuant to article 4 of the Dispute Settlement Understanding (DSU).[906] The DSB established nine new panels to adjudicate 13 new cases (where more than one complaint was filed dealing with the same matter, such complaints are normally adjudicated by a single panel). The DSB established panels in the following cases:

- European Communities—Certain Measures Prohibiting the Importation and Marketing of Seal Products (WT/DS369)
- European Communities—Measures Prohibiting the Importation and Marketing of Seal Products (WT/DS400, WT/DS401)
- Canada—Certain Measures Affecting the Renewable Energy Generation Sector (WT/DS412)
- China—Certain Measures Affecting Electronic Payment Services (WT/DS413)
- China—Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States (WT/DS414)

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[902] World Trade Organization, document WT/L/823.

[903] *Ibid*., WT/MIN(11)/28 and WT/L/84.

[904] *Ibid*., WT/MIN(11)/24 and WT/L/839.

[905] *Ibid*., WT/MIN(11)/27 and WT/L/840.

[906] The full text is available from http://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (accessed on 31 December 2011).

- Dominican Republic—Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric (WT/DS415, WT/DS416, WT/DS417, WT/DS418)
- Republic of Moldova—Measures Affecting the Importation and Internal Sale of Goods (Environmental Charge) (WT/DS421)
- United States—Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China (WT/DS422)
- Ukraine—Taxes on Distilled Spirits (WT/DS423)

Appellate Body and Panel reports adopted by the DSB

The DSB adopted the following eight panel and five Appellate Body reports during 2011:

- European Communities and Certain Member States—Measures Affecting Trade in Large Civil Aircraft (WT/DS316) (Appellate Body and Panel reports)
- Thailand—Customs and Fiscal Measures on Cigarettes from the Philippines (WT/DS371) (Appellate Body and Panel reports)
- United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (WT/DS379) (Appellate Body and Panel reports)
- United States—Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil (WT/DS382) (Panel report)
- European Communities—Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (WT/DS397) (Appellate Body and Panel reports)
- United States—Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China (WT/DS399) (Appellate Body and Panel reports)
- United States—Use of Zeroing in Anti-Dumping Measures Involving Products from Korea (WT/DS402) (Panel report)
- United States—Anti-Dumping Measures on Certain Shrimp from Viet Nam (WT/DS404) (Panel report)

(*c*) Waivers under article XI of the WTO Agreement

The General Council granted the following waivers from obligations under the WTO Agreements.

Waiver	Decision	Date of adoption of Decision	Granted until
Granted during 2011			
Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions	WT/L/832	30 November 2011	31 December 2012
Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions	WT/L/833	30 November 2011	31 December 2012

Waiver	Decision	Date of adoption of Decision	Granted until
Introduction of Harmonized System 2012 Changes into WTO Schedules of Tariff Concessions	WT/L/834	30 November 2011	31 December 2012
CARIBCAN	WT/L/835	30 November 2011	31 December 2013
European Union—Application of Autonomous Preferential Treatment to the Western Balkans	WT/L/836	30 November 2011	31 December 2016
Cape Verde—Implementation of Article VII of GATT 1994 and of the Agreement on Customs Valuation	WT/L/812	3 May 2011	1 January 2012
Previously granted—in force in 2011			
Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions	WT/L/809	14 December 2010	31 December 2011
Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions	WT/L/808	14 December 2010	31 December 2011
Argentina—Introduction of Harmonized System 1996 Changes into WTO Schedules of Tariff Concessions	WT/L/801	29 July 2010	30 April 2011
Preferential Tariff Treatment for Least-Developed Countries—Decision on Extension of waiver	WT/L/759	27 May 2009	30 June 2019
United States—Andean Trade Preference Act—Renewal of waiver	WT/L/755	27 May 2009	31 December 2014
United States—African Growth and Opportunity Act	WT/L/754	27 May 2009	30 September 2015
United States—Caribbean Basin Economic Recovery Act—Renewal of waiver	WT/L/753	27 May 2009	31 December 2014
European Communities—Application of Autonomous Preferential Treatment to Moldova	WT/L/722	7 May 2008	31 December 2013
Adopted by the Ministerial Conference on 17 December 2011			
Preferential Treatment to Services and Service Suppliers of Least-Developed Countries	WT/L/847	17 December 2011	15 years from the date of its adoption

11. International Atomic Energy Agency

(*a*) Member States of the International Atomic Energy Agency (IAEA)

In 2011, the Lao People's Democratic Republic became a Member State of the IAEA. By the end of the year, there were 152 Member States.

(*b*) Privileges and immunities

In 2011, Mozambique became a party to the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.[907] By the end of the year, there were 83 Parties.

(*c*) Treaties under IAEA auspices

(i) *Convention on the Physical Protection of Nuclear Material*[908]

In 2011, the status of the Convention remained unchanged with 145 parties.

(ii) *Amendment to the Convention on the Physical Protection of Nuclear Material*

In 2011, Argentina, Finland, Greece, Kazakhstan, the Netherlands, Saudi Arabia and The Former Yugoslav Republic of Macedonia adhered to the Amendment. By the end of the year, there were 52 Contracting States.

(iii) *Convention on Early Notification of a Nuclear Accident*[909]

In 2011, Bahrain, Botswana, Mauritania and Tajikistan became party to the Convention. By the end of the year, there were 113 parties.

(iv) *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*[910]

In 2011, Botswana, Mauritania and Tajikistan became party to the Convention. By the end of the year, there were 108 parties.

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

[908] *Ibid.*, vol. 1456, p. 101.

[909] *Ibid.*, vol. 1439, p. 275.

[910] *Ibid.*, vol. 1457, p. 133.

(v) *Convention on Nuclear Safety*[911]

In 2011, Albania, Bahrain and Ghana became party to the Convention. By the end of the year, there were 74 parties.

(vi) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management*[912]

In 2011, Albania, Chile, Ghana, Indonesia, Mauritania and Saudi Arabia became party to the Joint Convention. By the end of the year, there were 63 parties.

(vii) *Vienna Convention on Civil Liability for Nuclear Damage*[913]

In 2011, Kazakhstan and Saudi Arabia became party to the Convention. By the end of the year, there were 38 parties.

(viii) *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage*[914]

In 2011, Kazakhstan, Montenegro and Saudi Arabia became party to the Protocol. By the end of the year, there were nine parties.

(ix) *Joint Protocol Relating to the Application of the Vienna Convention on Civil Liability for Nuclear Damage and the Paris Convention on Third Party Liability in the Field of Nuclear Energy*[915]

In 2011, the status of the Protocol remained unchanged with 26 parties.

(x) *Convention on Supplementary Compensation for Nuclear Damage*[916]

In 2011, Senegal signed the Convention. By the end of the year, there were 15 Signatories and four Contracting States.

(xi) *Optional Protocol Concerning the Compulsory Settlement of Disputes*[917]

In 2011, the status of the Protocol remained unchanged with two parties.

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[911] *Ibid*., vol. 1963, p. 293.

[912] *Ibid*., vol. 2153, p. 303.

[913] *Ibid*., vol. 1063, p. 265.

[914] *Ibid*., vol. 2241, p. 270.

[915] *Ibid*., vol. 1672, p. 293.

[916] International Atomic Energy Agency, document INFCIRC/567. Available from http://www.iaea.org (accessed on 31 December 2011).

[917] United Nations, *Treaty Series*, vol. 2086, p. 94.

(xii) *Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA (RSA)*[918]

In 2011, Cambodia, Chad and Mozambique concluded the RSA Agreement. By the end of the year, there were 117 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)*[919]

In 2011, the status of the Agreement remained unchanged with 15 parties.

The Fifth Agreement to extend the 1987 RCA for a further period of five years was done in Bali on 15 April 2011. It entered into force on 31 August 2011, upon receipt by the Depositary of the second notification of acceptance. It would become effective as of 12 June 2012, upon expiration of the Fourth Agreement. By the end of 2011, there were three parties to the Agreement: India, Mongolia and Sri Lanka.

(xiv) *African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA)—(Fourth Extension)*[920]

In 2011, the Central African Republic, Ethiopia, Ghana, Kenya, Mali, Mauritania, Mozambique, Seychelles, Sierra Leone and the United Republic of Tanzania became party to the Agreement. By the end of the year, there were 31 parties.

(xv) *Co-operation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)*[921]

In 2011, Jamaica became party to the Agreement. By the end of the year, there were 21 parties.

(xvi) *Co-operative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology (ARASIA)*[922]

In 2011, the status of the Agreement remained unchanged with nine parties.

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[918] Model text available from http://ola.iaea.org (accessed on 31 December 2011).

[919] International Atomic Energy Agency, document INFCIRC/167/Add.22. Available from http://www.iaea.org (accessed on 31 December 2011).

[920] *Ibid*., document INFCIRC/377 and INFCIRC/377/Add.19 (Fourth extension). Available from http://www.iaea.org (accessed on 31 December 2011).

[921] United Nations, *Treaty Series*, vol. 2338, p. 337.

[922] *Ibid*., vol. 2203, p. 355.

(xvii) *Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[923]

In 2011, the status of the Agreement remained unchanged with seven parties.

(xviii) *Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[924]

In 2011, the status of the Agreement remained unchanged with six parties.

(*d*) IAEA legislative assistance activities

During 2011, the Agency continued under its Technical Cooperation Programme to provide legislative assistance in response to requests from its Member States. The Agency provided country-specific bilateral legislative assistance, especially by means of written comments and advice in drafting national nuclear legislation, to 20 Member States.

At the request of Member States, tailored training was also provided to several individuals, notably through short-term scientific visits organized at Agency Headquarters, allowing individuals to gain further practical experience in nuclear law.

The Agency organized the first annual session of the Nuclear Law Institute in Vienna from 19 November to 3 December 2011. The comprehensive two-week course was established in order to meet the increasing demand for legislative assistance by Member States, as well as to enable participants to acquire a solid understanding of all aspects of nuclear law and to draft, amend or review national nuclear legislation. Eighty-four representatives from 61 Member States participated in the course. Arrangements were underway to hold a second session later in 2012.

The first 'IAEA Treaty Event' was organized by the Secretariat in the margins of the 55th Regular Session of the General Conference. The event, which will be repeated during the 2012 Regular Session of the General Conference, was designed to promote the universal adoption of international treaties related to nuclear safety, security and liability for nuclear damage for which the Director General is depositary.

Finally, the Agency continued to take part in academic activities organized at the World Nuclear University and the International School of Nuclear Law through the provision of lecturers and the funding of participants through appropriate technical cooperation projects.

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[923] International Atomic Energy Agency, document INFCIRC/703. Available from http://www.iaea.org (accessed on 31 December 2011).

[924] *Ibid*., document INFCIRC/703. Available from http://www.iaea.org (accessed on 31 December 2011).

(*e*) IAEA Action Plan on Nuclear Safety

At the June 2011 IAEA Ministerial Conference on Nuclear Safety, a Ministerial Declaration[925] was adopted which requested the Director General, *inter alia*, to prepare a draft Action Plan on Nuclear Safety. Such a plan was, consequently, developed and thereafter adopted by the Board of Governors at its September 2011 meeting. The Action Plan was also presented to the September 2011 General Conference, where it was endorsed by all 151 Member States.[926]

The purpose of the Action Plan was to define a programme of work to strengthen the global nuclear safety framework. The programme consisted of 12 main actions, each with corresponding sub-actions, focusing on: safety assessments in the light of the accident at the Fukushima Daiichi nuclear power station; IAEA peer reviews; emergency preparedness and response; national regulatory bodies; operating organizations; IAEA Safety Standards; international legal framework; Member States planning to embark on a nuclear power programme; capacity-building; protection of people and the environment from ionizing radiation; communication and information dissemination; and research and development.

With respect to the international legal framework, the plan focused on how to improve its effectiveness and provided for the following sub-actions:

> "State parties to explore mechanisms to enhance the effective implementation of the Convention on Nuclear Safety, the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management, the Convention on the Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, and to consider proposals made to amend the Convention on Nuclear Safety and the Convention on the Early Notification of a Nuclear Accident.
>
> Member States to be encouraged to join and effectively implement these Conventions.
>
> Member States to work towards establishing a global nuclear liability regime that addresses the concerns of all States that might be affected by a nuclear accident with a view to providing appropriate compensation for nuclear damage. The IAEA International Expert Group on Nuclear Liability (INLEX) to recommend actions to facilitate achievement of such a global regime. Member States to give due consideration to the possibility of joining the international nuclear liability instruments as a step toward achieving such a global regime".

(*f*) Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management

The organizational meeting to prepare the Fourth Review Meeting of the Joint Convention took place in Vienna from 10 to 11 May 2011. During the meeting, the officers

[925] *Ibid*., document INFCIRC/821. Available from http://www.iaea.org (accessed on 31 December 2011).

[926] *Ibid*., document GOV/2011/59-GC(55)/14. Available from http://www.iaea.org (accessed on 31 December 2011).

for the Review Meeting were selected and its agenda was established. The Fourth Review Meeting was to be held from 14 to 23 May 2012.[927]

(*g*) Non-binding instrument on the transboundary movement of scrap metal

An open-ended meeting of technical and legal experts took place from 6 to 8 July 2011 at IAEA Headquarters in Vienna to discuss the development of a non-binding instrument on the transboundary movement of scrap metal that might inadvertently contain radioactive material.

The objective of the instrument would be to protect people, property and the environment from the harmful consequences of ionizing radiation arising from the transboundary movement of such material. The instrument would be aimed at harmonizing the approach of States with regard to responding to the discovery of the presence of such material, and to the handling, management and control thereof in a safe manner.

A key conclusion noted in the Chairman's Report was that the instrument should be developed as a 'Code of Conduct', so that it could be easily identified, but also understood to be non-binding, and so that it followed a well-established development process similar to other Codes of Conduct adopted under IAEA auspices.

(*h*) Safeguards Agreements

During 2011, Safeguards Agreements pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) with the Republic of the Congo,[928] Montenegro[929] and Mozambique,[930] entered into force. A Safeguards Agreement pursuant to the NPT was signed by Guinea but had not entered into force as of 31 December 2011. In addition, an agreement with Pakistan[931] for the application of safeguards in connection with the supply of two nuclear power stations entered into force on 15 April 2011.

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[927] The First and Second "Joint Convention Newsletters"—outreach tools to promote the Joint Convention to all of the Agency's Member States—dated March and September 2011 are available at the Joint Convention's public website http://www-ns.iaea.org (accessed on 31 December 2011).

[928] International Atomic Energy Agency, document INFCIRC/831. Available from http://www.iaea.org (accessed on 31 December 2011).

[929] *Ibid*., document INFCIRC/814. Available from http://www.iaea.org (accessed on 31 December 2011).

[930] *Ibid*., document INFCIRC/813. Available from http://www.iaea.org (accessed on 31 December 2011).

[931] *Ibid*., document INFCIRC/816. Available from http://www.iaea.org (accessed on 31 December 2011).

In 2011, Protocols Additional to the Safeguards Agreements between the IAEA and Andorra,[932] Bahrain,[933] Republic of the Congo,[934] Costa Rica,[935] Gambia,[936] Kyrgyzstan,[937] Mexico,[938] Montenegro,[939] Morocco,[940] and Mozambique[941] entered into force. Additional Protocols were signed by Guinea and the Republic of Moldova but had not entered into force as of 31 December 2011.

12. Organisation for the Prohibition of Chemical Weapons (OPCW)

(*a*) Membership

During 2011, the membership to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction ("the Convention" or "CWC")[942] remained unchanged. As of the end of 2011, there were 188 States parties to the CWC, and there were eight States, with the latest addition of the Republic of South Sudan, that had not ratified or acceded to the Convention. Of those States, two had signed the CWC and six 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

During 2011, the OPCW continued to negotiate bilateral privileges and immunities agreements with States parties pursuant to paragraph 50 of article VIII of the Convention. The Executive Council of the OPCW approved seven such agreements between the OPCW and States parties, namely, the Republic of Albania; the Republic of Bulgaria; the Czech

[932] *Ibid*., document Reproduced in IAEA Document: INFCIRC/808/Add.1. Available from http://www.iaea.org (accessed on 31 December 2011).

[933] *Ibid*., document INFCIRC/767/Add.1. Available from http://www.iaea.org (accessed on 31 December 2011).

[934] *Ibid*., document INFCIRC/831/Add.1. Available from http://www.iaea.org (accessed on 31 December 2011).

[935] *Ibid*., document INFCIRC/278/Add.1. Available from http://www.iaea.org (accessed on 31 December 2011).

[936] *Ibid*., document INFCIRC/277/Add.1. Available from http://www.iaea.org (accessed on 31 December 2011).

[937] *Ibid*., document INFCIRC/629/Add.1. Available from http://www.iaea.org (accessed on 31 December 2011).

[938] *Ibid*., document INFCIRC/197/Add.1. Available from http://www.iaea.org (accessed on 31 December 2011).

[939] *Ibid*., document INFCIRC/814/Add.1. Available from http://www.iaea.org (accessed on 31 December 2011).

[940] *Ibid*., document INFCIRC/228/Add.1. Available from http://www.iaea.org (accessed on 31 December 2011).

[941] *Ibid*., document INFCIRC/813/Add.1. Available from http://www.iaea.org (accessed on 31 December 2011).

[942] United Nations, *Treaty Series*, vol. 1974, p. 45.

Republic; the Dominican Republic; the Republic of Estonia; the Republic of Mali and the Socialist Republic of Viet Nam. The entry into force of those agreements was pending as of the end of the year.

In addition, during 2011, the OPCW concluded a number of international agreements, including, *inter alia,* agreements concerning the procurement of assistance, contribution agreements, cost-sharing agreements, exchange of letters, technical arrangements, facility agreements, and memoranda of understanding, that entailed substantive undertaking at the policy level or that were intended to facilitate the day-to-day work of the Technical Secretariat in support of the objectives of the Convention. The Technical Secretariat registered 28 such international agreements in 2011 and three amendments to an international agreement already in force.

(*c*) OPCW legislative assistance activities

Throughout 2011, the Technical Secretariat of the OPCW continued to render assistance, upon request, to States parties in the adoption of 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.[943]

During 2011, the Technical Secretariat provided, upon request, 13 comments on draft implementing legislation and 11 comments or guidance on measures at the regulatory level. Such requests for legal assistance were received from 23 States parties from the following regions: 11 from Africa; four from Asia and the Pacific; five from GRULAC; and three from WEOG.

In the course of 2011, the number of National Authorities increased by one and therefore, as of the end of the year, 186 States parties out of 188 had designated or established a National Authority. There remained only two States parties that had 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, 122 States parties (65 per cent) had submitted the full text of their implementing legislation. Furthermore, regarding legislation covering all key areas of the Action Plan,[944] 88 of the States Parties (46 per cent) had informed the Technical Secretariat of having adopted such legislative or administrative measures.

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.

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[943] OPCW, document C-14/DEC.12. Available from http://www.opcw.org (accessed on 31 December 2011).

[944] Adopted by the Conference at its Eighth Session. *Ibid*., document C-8/DEC.16 (24 October 2003). Available from http://www.opcw.org (accessed on 31 December 2011).

In addition to the assistance to individual States parties, a number of national, subregional, regional workshops, sensitization and awareness presentations and training courses were held for National Authorities, parliamentarians and other national stakeholders involved in the implementation of the Convention. Those events dealt, *inter alia,* with matters such as legislative and regulatory drafting.

In particular, the Ninth Regional Meeting of National Authorities of States Parties in Africa to the Chemical Weapons Convention, was held in Accra, Ghana, in July 2011. The purpose of the meeting was to provide participants with an overview of the Convention and its requirements and to provide a forum of discussion for the representatives of the National Authorities in the region, in order to identify what further steps each State party should take to implement its obligations under the Convention.

In September 2011, the Twelfth Regional Meeting of National Authorities in Latin America and the Caribbean, was held in Buenos Aires, Argentina. The purpose of the meeting was to provide participants with an overview of the Convention and its requirements and to provide a platform to States parties in the region to exchange information on a range of topics related to the implementation of the Convention, including the elements of implementing legislation.

In October 2011, a legal workshop for National Authorities of States parties to the Chemical Weapons Convention in Africa was held in Kampala, Uganda. The purpose of this meeting was to provide technical assistance to those States parties engaged in the legislative drafting process. An additional purpose of the workshop was to advise participants on the requirements of the Convention that ought to be reflected in national legislation.

13. Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization

(*a*) Membership

The Preparatory Commission is composed of States signatories to the Comprehensive Nuclear-Test-Ban Treaty, 1996 (CTBT).[945] No additional States signed the Treaty during 2011 and the total number of signatures remained at 182.

During 2011, two States (Ghana and Guinea) deposited instruments of ratification of the CTBT with the United Nations Secretary-General as Depositary. In order for the Treaty to enter into force, ratification by the following eight States was needed: China, Democratic People's Republic of Korea, Egypt, India, Israel, Islamic Republic of Iran, Pakistan, and the United States of America.

(*b*) Legal status, privileges and immunities and international agreements

In 2011, the External Storage and Maintenance Facility of the Commission was temporarily incorporated into the seat of the Commission under the Headquarters Agreement concluded with the Republic of Austria. In addition to the Headquarters Agreement, legal status, privileges and immunities were granted to the Commission through "Facility

[945] *United Nations Juridical Yearbook 1996* (United Nations Publications, Sales No. 01.V.10), p. 311.

Agreements" concluded with each of the 89 States which were hosting one or more of the 337 monitoring facilities comprising the International Monitoring System (IMS) foreseen to be established under the CTBT. In 2011, facility agreements with Mexico, Portugal, and Tunisia were concluded. The status at the end of 2011 was 42 concluded facility agreements out of which 34 had entered into force.

Pursuant to the decision of the 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,[946] in 2011 the Preparatory Commission concluded with Turkey and Malaysia, respectively, an Agreement concerning the Use of Primary Seismic, Auxiliary Seismic and Hydroacoustic Data for Tsunami Warning Purposes based on the model approved by the Commission, thus bringing the total number of such agreements to ten, concluded with: Australia, France, Indonesia, Japan, Malaysia, Philippines, Thailand, Turkey and two with the United States of America.

In 2011, two Memoranda of Understanding were concluded: (1) with the Federal Minister of Defence and Sports of the Republic of Austria concerning Mutual Cooperation for Training and Exercise Activities of the Commission related to On-site Inspections; and (2) with the Hungarian Atomic Energy Authority concerning Mutual Cooperation for Training and Exercise Activities of the Commission related to On-site Inspections.

To provide for the necessary privileges and immunities and arrangements for the conduct of workshops or training courses outside of Austria, 11 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: (i) legal and technical information about the CTBT in order to facilitate signature or ratification of the Treaty; (ii) the legal and administrative measures necessary for the implementation of the Treaty; and (iii) 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 2011, the Secretariat continued to promote the exchange of information between States signatories on the subject of national implementation measures. For the first time, the Secretariat organized a pilot workshop on CTBT implementing legislation for requesting States of the Latin America and Caribbean region, which took place in Vienna from 1 to 4 November 2011. The objective was to provide a venue to analyze and discuss the main elements of CTBT implementing legislation and other implementation measures, including during the preparatory phase. The International Atomic Energy Agency, United Nations Office on Drugs and Crime Terrorism Prevention Branch, and the United Nations Security Council 1540 Committee also participated, contributing to a discussion of the measures as it related to the international context. As a result of the meeting, participants elaborated proposals for national measures in their respective countries and provided

[946] *United Nations Juridical Yearbook 2006* (United Nations Publications, Sales No. E.09.V.1), p. 256.

valuable input for the further development of the programme of legal assistance of the Secretariat. It was expected that the workshop format would serve as a reference for similar events in the future.

The Secretariat provided comments and assistance in 2011 on 113 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.[947]

14. International Monetary Fund

(*a*) Membership

(i) *Accession to membership*

No additional States became members of the International Monetary Fund (IMF) in 2011. On 21 April 2011, the Republic of South Sudan submitted an application for membership in the IMF, which was still being processed as of 31 December 2011. As of 31 December 2011, the membership of the IMF consisted of 187 member countries.

(ii) *Status and obligations under article VIII or article XIV of the IMF's Articles of Agreement*

Under article VIII, sections 2, 3, and 4 of the IMF's Articles of Agreement,[948] members of the IMF could not, without the IMF's approval, (i) impose restrictions on the making of payments and transfers for current international transactions; or (ii) engage in any discriminatory currency arrangements or multiple currency practices. Notwithstanding these provisions, pursuant to article XIV, section 2, when a member joined the IMF, it could notify the IMF that it intended to avail itself of the transitional arrangements under article XIV that allowed the member to maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Article XIV did not, however, permit a member, after it joined the IMF, to introduce new restrictions on the making of payments and transfers for current international transactions without the IMF's approval.

Members that maintained restrictions under article XIV, section 2 were required to consult with the IMF annually on the further retention of such restrictions. Members could notify the IMF at any time that they accepted the obligations of article VIII, sections 2, 3, and 4 and no longer availed themselves of the transitional provisions of article XIV. The IMF has stated that, before members notify the IMF that they are accepting the obligations of article VIII, sections 2, 3 and 4, it would be desirable that, as far as possible, members eliminated measures that would require IMF approval and satisfied themselves that they were not likely to need recourse to such measures in the foreseeable future. Where necessary, and if requested by a member, the IMF also would provide technical assistance to help the member remove its exchange restrictions and multiple currency practices.

[947] http://www.ctbto.org.

[948] Available at http://www.imf.org/external/pubs/ft/aa/index.htm (accessed on 31 December 2011).

On 20 May 2011, the Republic of Mozambique formally notified the IMF of its acceptance of the obligations of article VIII, sections 2, 3, and 4 of the IMF's Articles of Agreement. The total number of countries that had accepted these obligations, as of 31 December 2011, was 169.

(iii) *Overdue financial obligations to the IMF*

As of 31 December 2011, members with protracted arrears (i.e., financial obligations that were overdue by six months or more) involving the general resources of the IMF were Somalia and the Republic of the Sudan. Zimbabwe had arrears to the Poverty Reduction and Growth Trust (PRGT) administered by the IMF as Trustee.

Article XXVI, section 2(a) of the IMF's Articles of Agreement provides that if "a member fails to fulfil any of its obligations under this Agreement, the [IMF] may declare the member ineligible to use the general resources of the [IMF]." Such declarations of ineligibility were in place at the end of December 2011 with respect to Somalia and the Republic of the Sudan, whose arrears were subject to sanctions under article XXVI. In the case of Zimbabwe, its arrears to the PRGT were handled under a separate framework since such arrears did not involve the IMF's general resources and were therefore not subject to article XXVI.

(*b*) Issues pertaining to the representation at the IMF

(i) *Somalia*

In October 1992, the IMF found that there was no effective government for Somalia with which the IMF could carry on its activities. As of the end of 2011, the positions of the Governor and Alternate-Governor for Somalia in the IMF remained vacant.

(ii) *Madagascar*

In September 2009, the IMF found that there was no internationally recognized government for Madagascar with which the IMF could carry on its activities. As of the end of 2011, the positions of the Governor and Alternate-Governor for Madagascar in the IMF remained vacant.

(*c*) Key policy decisions of the IMF

In 2011, two outstanding amendments to the Articles of Agreement entered into force. The IMF also took steps to move ahead with a number of major policy reforms that would allow it to meet the evolving needs of its members and to adjust to changes in the global economy.

(i) *Entry into force of amendments to the IMF's Articles of Agreement*

a. Amendment to expand the investment authority of the IMF

The fifth amendment to the IMF's Articles of Agreement, entered into force for all members on 18 February 2011 and was a key part of the IMF's new income model designed in 2008 to put the IMF's financing on a sustainable footing.[949]

The fifth amendment provided authority to broaden the range of instruments in which the IMF might invest in accordance with rules and regulations to be adopted by the IMF Executive Board. The amendment aimed to provide flexibility for the IMF to enhance the average expected return on its investments and adapt its investment strategy over time. Following its entry into force, the IMF's investment policies would evolve gradually, and would reflect the public nature of the funds to be invested and would include safeguards to ensure that the broadened investment authority did not lead to actual or perceived conflicts of interest.

b. Amendment on voice and participation

The sixth amendment to the IMF's Articles of Agreement, entered into force for all members on 3 March 2011. The amendment was proposed in 2008 in conjunction with a set of reforms to overhaul the IMF's governance structure to re-align quota, the resources that a country paid as its capital subscription as a member of the IMF and was broadly reflective of the economic weight of the county. Quotas were also used to establish each member's voting shares in the IMF (i.e., weighted voting). The amendment addressed two issues, first, a reform to the system of "basic votes" of members and second, participation at the IMF's Executive Board.

The first issue addressed was a reform to the provision in the IMF's Articles of Agreement on "basic votes" of members. Under the Articles of Agreement, a member's voting share comprised two elements: a fixed number of "basic votes" which were the same number for every member; and "quota-based votes" which were the votes allocated to members according to their quota share.[950] Until the sixth amendment, the share of basic votes was rigidly fixed in the IMF Articles of Agreement at 250 votes per member. Over time, as the membership of the IMF expanded and quota-related voting shares were increased, the significance of basic votes as a share of total voting power was diluted. Upon entry into

[949] Since its inception, the IMF has relied primarily on its lending activities to fund its administrative expenses. A reform of the IMF's income model approved by the Board of Governors in May 2008 allowed the IMF to diversify its sources of income through, *inter alia*, the establishment of an endowment funded within the investment account with the profits from a limited sale of the IMF's gold holdings as well as a broadening of the IMF's investment authority to enhance returns on its investments. Broadening the IMF's investment authority required an amendment of the IMF's Articles of Agreement.

[950] The voting structure using both basic votes and quota-based votes, which was similar to structures in place at other international financial institutions, was developed at the Bretton Woods Conference in 1944 as a balance between two alternative bases for determining voting power: (a) on the one hand, given the IMF's role as a financial institution, it was recognized during the Bretton Woods negotiations that a member's voting power in the Fund should reflect the size of the member's financial contribution to the Fund; and (b) on the other hand, as an intergovernmental organization constituted through a multilateral treaty, it was considered necessary to pay due regard to the equality of States under international law.

effect of the sixth amendment, the share of basic votes in the total votes was permanently set to equal 5.502 per cent of the total voting power (approximately tripling the number of basic votes per member), thereby ensuring that the ratio of total basic votes to total voting power would not be eroded by quota increases.

The second issue addressed by the sixth amendment concerned participation in the IMF's Executive Board. Prior to the amendment, each Executive Director was required to appoint one Alternate Executive Director who had the power to act for the Executive Director when the Executive Director was not present in meetings of the Board. With the growth of the IMF's membership and the average size of constituencies increasing over time, concerns arose over the burdens placed on Executive Directors representing large constituencies. The sixth amendment revised the legal framework to entitle (but not require) Executive Directors elected by a specified number of members to appoint a second Alternate Executive Director. The amendment also permitted the Board of Governors to revise the specified number in the context of each regular election of Executive Directors. The amendment would strengthen the offices of those Executive Directors and facilitate the execution of their responsibilities under the IMF Articles of Agreement. The IMF's Board of Governors had specified that following the 2012 regular election of Executive Directors, an Executive Director elected by seven or more members would be entitled (but not required) to appoint an additional Alternate Executive Director.

(ii) *IMF instruments and financial resources*

a. Reform and strengthening of credit lines and emergency assistance

On 21 November 2011, the IMF Executive Board reviewed the Flexible Credit Line (FCL)[951] and the Precautionary Credit Line (PCL)[952] as part of the lending toolkit of the IMF's General Resources Account (GRA). The Executive Board took a decision to replace the PCL with a Precautionary and Liquidity Line (PLL) and to create a single instrument—called the Rapid Financing Instrument (RFI)—to provide emergency assistance in the GRA. The November 2011 IMF Executive Board review of the FCL and PCL found that those instruments had bolstered confidence and moderated balance of payments pressures during periods of heightened stress in the international monetary system. However, gaps were identified in the ability of the IMF to respond quickly to meet liquidity needs of members with relatively strong fundamentals affected during systemic crises (crisis bystanders) and in the IMF's ability to address urgent financing needs that arose in a broader range of circumstances than natural disasters and post-conflict situations, which were covered

[951] The FCL was established in 2009 for countries with very strong fundamentals, policies, and track records of policy implementation. Its rigorous qualification criteria (ex ante conditionality) enabled the IMF to approve financing without the need for ex post conditionality typical in other IMF financing arrangements.

[952] The PCL was created in 2010 to provide financing to members with sound fundamentals, policies, and track records of policy implementation, that did not have an actual balance of payment need at the time of approval of the arrangement. It combined a qualification criteria modeled after that for the FCL (ex ante conditionality), but with focused ex post conditionality aimed at addressing identified remaining vulnerabilities.

under instruments for those specific purposes (the Emergency Natural Disaster Assistance (ENDA) and Emergency Post-Conflict Assistance (EPCA) instruments, respectively).

In light of the gaps discussed above, the IMF Executive Board replaced the PCL with a more flexible instrument, the PLL. The PLL was designed to provide room for the IMF to deal with rapidly evolving crises, and was expected to enhance the effectiveness of the IMF's lending toolkit by allowing qualifying members to obtain financing in a wider range of situations and enabling them to benefit from the positive signaling effect linked with the rigorous qualification criteria for accessing financing under the PLL. In particular, the PLL allowed (i) its use by members with an actual balance of payments need at the time of approval (rather than only a potential financing need, as was required under the PCL), and (ii) six-month arrangements to meet short-term balance of payments needs (as opposed to one to two years arrangements under the PCL).

To address the gaps in the IMF framework with respect to emergency assistance, the IMF Executive Board took a decision to replace ENDA and EPCA with a single instrument—the RFI—to provide GRA emergency assistance on a broader basis similar to the existing Rapid Credit Facility (RCF) under the PRGT for low-income countries. The RFI supported the full range of urgent balance of payments needs, including those arising from exogenous shocks (e.g., commodity price shocks and natural disasters), post-conflict and other fragile situations, or from other disruptive situations.

b. New arrangements to borrow—expansion and activation

The New Arrangements to Borrow (NAB) was a standing set of credit lines under which certain IMF members or their institutions were committed to provide resources to the IMF in circumstances in which the IMF needed to supplement its quota resources. Since the onset of the economic crisis, a need had been recognized for an expanded NAB with more flexible terms to support the IMF's response to the present and possible future crises. In this regard, a tenfold expansion of the NAB, approved by the IMF on 12 April 2010, was completed on 11 March 2011, and provided for, at that time, an effective tripling of the IMF's lending resources.

In order for NAB resources to be mobilized, the NAB had to be activated. Activation allowed, subject to maximum level of commitments specified in each proposal for the establishment of an activation period, the use of NAB resources to fund any GRA financing needs under arrangements or outright purchases approved during the activation period. Under the NAB, the test for activation was whether GRA resources needed to be supplemented in order to forestall or cope with an impairment of the international monetary system.

On 1 April 2011, the IMF Executive Board activated the NAB for an initial period of six months, which required the consent of participants representing 85 per cent of total credit arrangements eligible to vote and the approval of the Executive Board. The Executive Board was of the view that substantial uncertainties remained concerning the financing needs that might arise during the activation period and thus concerning the need for additional borrowing headroom to ensure that the IMF was well positioned to address those financing needs. The NAB was subsequently activated for an additional period of six months commencing on 1 October 2011. In addition, in November of 2011, the IMF

Executive Board approved the renewal of the NAB for a period of five years commencing on 17 November 2012.

(iii) *Surveillance*

The process known as IMF surveillance was a core mandate of the IMF. Article IV required the IMF to exercise oversight over members' compliance with their obligations under article IV, section 1 and also directed the IMF to give heightened scrutiny ("firm surveillance") to members' exchange rate policies. As a means of enabling the IMF to discharge those responsibilities, members were required to provide the necessary information to the IMF and, when requested by the IMF, to consult with the IMF regarding their policies. In addition, article IV, section 3(a) gave the IMF a specific mandate to "oversee the international monetary system in order to ensure its effective operation." That function provided the basis for so-called multilateral surveillance, including regional and global surveillance. While surveillance was a continuous process, policy discussions between the IMF and its members were conducted primarily in the context of "article IV consultations". Staff reports providing economic analysis and policy advice at a bilateral and multilateral level were prepared for discussion by the Executive Board. Discussion at the Executive Board was a culmination of the surveillance cycle and served as a mechanism for peer review of the policies of IMF members and of the issues impacting global stability.

The IMF periodically reviewed the legal framework and the effectiveness of bilateral surveillance.[953] The most recent such review ("Triennial Surveillance Review") was completed by the Executive Board on 24 October 2011. The 2011 review marked a departure from previous reviews by taking a comprehensive approach covering both bilateral and multilateral surveillance. It drew extensively from feedback from major stakeholders, analysis by IMF staff, as well as from studies and commentaries by external experts. For the first time, the review was assessed and endorsed by an independent External Advisory Group. The review noted that important progress had been made in strengthening surveillance since the previous review. However, it also identified remaining gaps, drawing in large part on lessons from the global financial crisis.

Key conclusions by the Executive Board included the need for: (i) more work on analyzing interconnections between countries and economic spillover effects of a crisis in one or more countries on other countries; (ii) more in-depth risk assessments in all article IV surveillance reports and the World Economic Outlook/Global Financial Stability Report/Fiscal Monitor, taking into account interconnections and spillovers; (iii) more work on financial stability, including deeper coverage in article IV reports and a regular strategic work plan for promoting financial stability endorsed by the Executive Board and the IMF Financial Committee; (iv) renewed emphasis on external stability, including by regularly publishing a multilaterally-consistent assessment of external balances; (v) gaining further traction in surveillance with strengthening incentives for candor, collaboration, and relevance; and (vi) consideration in the future of changes in the IMF's legal framework for surveillance to facilitate an integrated and balanced approach to global economic and financial stability.

[953] Since 2007, the reviews had been conducted every three years.

15. World Health Organization

(*a*) Constitutional developments[954]

The Republic of South Sudan joined the World Health Organization (WHO) as a new Member State on 27 September 2011.

No new amendments to the WHO Constitution were proposed or adopted, and neither of the two present amendments entered into force. The present amendments were the amendment to article 7 and the amendment to article 74 of the Constitution. The amendment to article 7 of the Constitution was adopted by the Eighteenth World Health Assembly by resolution WHA18.48 of 20 May 1965. The amendment to article 74 of the Constitution was adopted by the Thirty-first World Health Assembly by resolution WHA31.18 of 18 May 1978. Respectively, they had been accepted by 98 and 112 Member States as of the end of 2011. Amendments would come into force for all members when adopted by a two-thirds vote of the Health Assembly and accepted by two-thirds of the members in accordance with their respective constitutional processes.

(*b*) Other normative developments and activities

(i) *International Health Regulations (2005)*

The IHR Review Committee held its fourth meeting from 28 to 30 March 2011 at WHO headquarters in Geneva. The World Health Assembly considered the final report of the Review Committee in May 2011 and adopted resolution WHA64.1 on the implementation of the International Health Regulations (2005) (IHR (2005) or the Regulations) which urged WHO Member States to support the implementation of the recommendations contained in the Committee's final report and requested the WHO Director-General to present an update to the Sixty-sixth World Health Assembly on progress made in taking forward the Committee's recommendations and to provide technical support to WHO Member States in implementing the recommendations.

In 2011, WHO provided substantial legal assistance to WHO Member States with regard to IHR implementation in national legislation, including back-to-back workshops on those subjects in Harare, Zimbabwe, from 24 to 26 and from 28 to 30 November.

During the course of 2011, several IHR provisions and procedures were invoked in relation to the continuing review of pandemic (H1N1) 2009.

(ii) *Amendments to basic documents*

The Sixty-fourth World Health Assembly, by resolution WHA64.22 on 24 May 2011, adopted amendments to the Financial Regulations. It amended Regulation XIV of the Financial Regulations with the revised text reading:

> "14.1 External Auditor(s), each of whom shall be the Auditor-General (or officer holding equivalent title or status) of a Member government, shall be appointed by the Health Assembly. The term of office shall be four years, covering two budgetary peri-

[954] For the text of the WHO Constitution, see United Nations, *Treaty Series*, vol. 14, p. 185.

ods, and can be renewed once for an additional term of four years. External Auditor(s) appointed may be removed only by the Assembly";

"14.8 The External Auditor(s) shall issue a report on the audit of the annual financial statements prepared by the Director-General pursuant to Regulation XIII. The report shall include such information as he/she/they deem(s) necessary in regard to Regulation 14.3 and the Additional Terms of Reference";

"14.9 The report(s) of the External Auditor(s) shall be transmitted through the Executive Board, together with the audited financial statements, to the Health Assembly not later than 1 May following the end of the financial year to which the final accounts relate. The Executive Board shall examine the annual financial statements and the audit report(s) and shall forward them to the Health Assembly with such comments as it deems necessary."

The Executive Board, by resolution EB128.R4 of 20 January 2011, confirmed amendments to Staff Rules made by the Director-General concerning post classification, medical certification and inoculations, promotion, reassignment, annual leave, leave without pay, sick leave, sick leave under insurance cover, abolition of post, remuneration of staff in the professional and higher categories and education grant. By the same resolution, the Executive Board requested the Director-General to submit revisions concerning the Staff Rule which regulated the criteria for granting continuing appointments. It also recommended amendments to Staff Regulations through resolution EB128.R5.

(iii) *Establishment of WHO country office in Turkey*

The domestic legal process regarding the exchange of notes verbales with the aim of extending for one year the Agreement between the WHO Regional Office for Europe and the Government of the Republic of Turkey on the Establishment of a WHO Country Office in Turkey (signed on 15 February 2008) was completed on 15 June 2011; upon WHO notification to the Turkish Government of the receipt of the respective note verbale on 14 July 2011, the one-year extension entered into force on 14 July 2011 in Turkish domestic law by the decision of Turkish Council of Ministers of 22 August (Decision Nr. 2011/2184) which was published in the Official Gazette on 10 September 2011.

The Host Agreement between the Government of the Hellenic Republic and the World Health Organization Regional Office for Europe concerning the establishment of the Office for Support to the Prevention and Control of Non-communicable Diseases in Athens, Greece was ratified by the Greek Government with the law 3933/2011, which was published in the Government Gazette under Number 52, Issue A, dated 17 March 2011. Upon WHO notification to the Greek Government that WHO had completed all internal formalities for entry into force of the host agreement in accordance with article 15(1) thereof, the host agreement entered into force as of 4 May 2011.

(iv) *Supporting national law reform efforts on WHO mandated topics*

During 2011, headquarters and regional offices of WHO provided technical cooperation to a number of Member States in connection with the development, assessment or review of various areas of health legislation and WHO mandated topics.

The WHO Centre for Health Development developed a Model Ordinance for Smoke-free Cities. The Model Ordinance drew on the best elements of laws from many jurisdictions, and from the WHO Framework Convention on Tobacco Control Guidelines on implementation of the Convention's article 8. It offered clear language as a starting point for municipalities' drafts of smoke-free laws and ordinances. The Centre for Health Development, in collaboration with regions and WHO headquarters, had also developed a training package to make cities smoke-free that integrated the Model Ordinance into broader concrete actions to develop a local legislation addressing second-hand smoke. A first workshop was conducted in late 2011 in Manila, Philippines for cities from China, the Republic of Korea, Mongolia, Philippines, and Viet Nam.

The Department of Reproductive Health and Research conducted comprehensive international, regional and selected national legal and jurisprudential research and analysis related to sexuality and sexual health, provided technical expert contributions to the work of the Council of Europe and the United Nations Committee on the Elimination of Discrimination against Women and contributed to national legislative processes on request. A comprehensive international and regional human rights and legal analysis on abortion was integrated into the update of the WHO document 'Safe abortion: technical and policy guidance for health systems'.

The Department of Mental Health and Substance Abuse provided technical support to the Solomon Islands and Uganda for their law reform. It also supported capacity-building for key national actors on mental health law and human rights through the International Diploma on Mental Health Law and Human Rights. The Diploma, which was run in collaboration with the Indian Law Society's Law College in Pune, India, equipped students with the knowledge and skills to advocate for human rights and influence national legislative and policy reform in line with the United Nations Convention on the Rights of Persons with Disabilities, 2006[955] and other key human rights standards. WHO was also producing a collection of examples of effective interactions between the criminal justice system and the health care system that would facilitate the treatment of drug dependence.

The Department of Violence and Injury Prevention and Disability provided technical support to ten Member States to review and revise road safety legislation. Nine countries had identified focus areas to amend legislation and two of the nine countries (Brazil and Cambodia) had initiated legislative reform proposals.

As requested by the United Nations General Assembly resolution 64/255 of 2 March 2010, a Global Plan for the Decade of Action for Road Safety 2011–2020 was developed which supported adherence to United Nations legal instruments and the creation of regional legal instruments (road safety management), encouraged Member States to apply and promulgate motor vehicle safety regulations developed by the United Nations World Forum for the Harmonization of Vehicle Regulations, and enhanced sustained or increased enforcement of laws and standards.

The regional office for Europe continued to assist countries in the implementation of international obligations as well as to provide support in their efforts to improve national public health legislation. Guidance on developing public health law was published for countries to reinforce the development and improvement of public health legislation. For

[955] *Ibid.*, vol. 2515, p. 3.

the last biennium, six countries received technical assistance for the development of public health laws, which had been endorsed by national parliaments. For the present biennium, amendments of basic documents including public health laws were planned for another six Member States in the region.

16. World Bank

(*a*) Recent reforms to the World Bank Group's sanctions regime

The World Bank[956] is one of the world's premier international financial institutions. Its sanctions regime emerged out of the Bank's duty, enshrined in its Articles of Agreement, to ensure that the proceeds of its loans and other financings are used for their intended purposes and with due attention to economy and efficiency.[957] That fundamental requirement formed the legal and policy basis for much of the Bank's fiduciary framework, including its project level anti-corruption efforts.

(i) *Overview of the Bank's sanctions regime: structural components and sanctions*

The Bank Group established a set of legal and other tools to help prevent and combat fraud and corruption in Bank Group projects and programs. Among other things,[958] the Bank Group established a formal process for sanctioning firms and individuals which had been found to have engaged in fraud or corruption in Group-financed projects, primarily by declaring them ineligible to be awarded future contracts ('debarment').[959]

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[956] The World Bank is a term used to refer collectively to two institutions, the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). IBRD began operations in 1947, with the purpose of providing loans to developing countries, while IDA was founded much later, in 1960, to provide financing on concessional terms to the poorest and least credit-worthy developing countries. The World Bank is part of the World Bank Group, a constellation of institutions including, in addition to IBRD and IDA, the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Center for Settlement of Investment Disputes (ICSID).

[957] See United Nations, *Treaty Series*, vol. 2, p. 134, Articles of Agreement of the International Bank for Reconstruction and Development Articles of Agreement, art. III, section 5(b); and International Development Association Articles of Agreement, art. V, section 6, available at http://web.worldbank.org (accessed on 31 December 2011).

[958] While the sanctions regime was an internal administrative process designed to address fraud and corruption committed by contractors and other third-party firm and individuals, the Bank also developed anti-corruption tools aimed at borrowers and other recipients of loan proceeds with which it had direct contractual privity. Those included Anti-Corruption Guidelines and other provisions included in, or incorporated by reference into, its legal agreements. Other such tools included "smart project design", whereby anti-corruption mechanisms—including the direct participation of clients in selecting and implementing projects, public disclosure requirements, and improved supervision through community-based project facilitators who were linked to national networks—were embedded within the projects and programs the Bank supports.

[959] See World Bank, World Bank Sanctions Procedures (as adopted by the World Bank as of January 1, 2011) ("the Sanctions Procedures"). Available from http://go.worldbank.org/CVUUIS7HZ0 (accessed on 31 December 2011).

Given the Bank's functional model as an international financial institution, a decision to debar was naturally subjected to an administrative process.[960] The Bank created a unique, *sui generis* forum that was increasingly quasi-judicial in nature. The Group's sanctions process during the period under review consisted of the following principal components:

a. Investigation and Preparation of a Statement of Accusations and Evidence

The Bank's Integrity Vice-Presidency (INT) was charged with, among other things, investigating allegations and other indications of sanctionable practices in connection with Bank Group financing. If, after investigation, INT believed that there was sufficient evidence that a firm or individual had engaged in a sanctionable practice, it would launch a sanctions case by submitting a Statement of Accusations and Evidence (SAE) to one of the Bank Group's Evaluation and Suspension Officers (EOs).[961]

b. Sanctions Proceedings

The core of the sanctions process lay in formal sanctions proceedings, which consisted of the following two tiers:

A first tier review of the SAE by the EO for sufficiency of the evidence. If the EO found that the accusations were supported by 'sufficient evidence',[962] he/she would issue a Notice of Sanctions Proceedings to the Respondent, appending the SAE, recommending a sanction and temporarily would suspend the Respondent from eligibility for Bank-financed contracts (effective on issuance). Thereafter, the Respondent could contest the determination. Uncontested EO determinations resulted in imposition of the sanction.

In cases where the Respondent wished to contest the EO's final determination, it could trigger a second tier review by filing a 'Response' with the World Bank Group's Sanctions Board, a body composed of three Bank staff and four non-Bank staff, and chaired by one of its non-Bank staff members. The Sanctions Board then would consider the case *de novo* and take the final decision on the sanction to be imposed, if any. While the first tier of proceedings would be conducted exclusively on the basis of written pleadings, the second phase of the proceedings might include hearings if either the Respondent or INT requested them. The name(s) of the sanctioned party(ies) and the sanction(s) imposed would be made public.[963]

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[960] See Leroy, A-M., and F. Fariello, *The World Bank Group Sanctions Process and Its Recent Reforms* (Washington, D.C., World Bank, 2012).

[961] The Bank Group had four separate EOs for cases relating to IBRD or IDA operations, IFC operations, MIGA operations and Bank guarantee operations. As of the end of 2011, sanctions cases had been heard only by the IBRD/IDA EO.

[962] The term "sufficient evidence" was defined as evidence sufficient to support a reasonable belief, taking into consideration all relevant factors and circumstances, that it was more likely than not that the respondent had engaged in a Sanctionable Practice. See Sanctions Procedures, article I, section 1.02(a). Available from http://go.worldbank.org/CVUUIS7HZ0 (accessed on 31 December 2011).

[963] The same basic procedures applied to cases relating to IFC, MIGA and Bank Guarantee operations, with adjustments appropriate to their different business models: in particular, those cases would involve separate EOs, with more expansive standards of review, and alternate members of the Sanctions Board would be appointed to hear cases relating to private sector operations.

In such proceedings, the initial burden of proof would be on INT to establish that it was 'more likely than not' that the Respondent had engaged in a sanctionable practice.[964] If the EO considered that INT had made out a *prima facie* case against the Respondent, however, the burden would shift to the Respondent. As befits an administrative proceeding,[965] flexible rules of evidence would apply: in making their determinations, the EO and Sanctions Board could both consider any form of evidence, including circumstantial evidence, and drew any inferences they deemed reasonable therefrom.[966]

The Sanctions Procedures provided for a range of five possible sanctions:

1. *Debarment with Conditional Release*: The 'baseline' or default sanction[967] was to impose a minimum period of debarment of three years, after which the sanctioned party might be released if it had complied with certain defined conditions. The conditions normally included the debarred party having put in place, and having implemented for an adequate period, an integrity compliance program satisfactory to the World Bank Group.

2. *Indefinite or Fixed-Term Debarment*: In cases where no appreciable purpose would be served by imposing conditions for release but deterrence required some period of debarment, sanctioned parties might be debarred for a specified period of time, after which they were automatically released from debarment. That would occur, for example, in cases where a sanctioned firm had already put in place a robust corporate compliance program, the sanctionable practice involved the isolated acts of an employee or employees who had already been terminated, and the proposed debarment was for a relatively short period of time (e.g. one year or less). At the opposite extreme, in exceptional cases where there was no realistic prospect that the Respondent could be rehabilitated, it might also be sanctioned indefinitely.

3. *Conditional Non-Debarment*: Under this sanction, the sanctioned party was not debarred, provided the party complied with certain defined conditions within a set time frame. If the conditions were not met, the party was debarred. Conditional non-debarment was normally applied in cases where the Respondent had already taken comprehensive voluntary corrective measures and the circumstances otherwise indicated that it need not be debarred. It was also applied to parents and other affiliates of respondents in cases where they were not engaged in misconduct but a systemic failure to supervise made the misconduct possible.

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[964] Such standard of proof was equivalent to the usual civil standard of 'preponderance of the evidence' or 'balance of probabilities', translated into terms understandable to non-lawyers. See Thornburgh, D., R. L. Gainer and C. H. Walker, *Report Concerning the Debarment Processes of the World Bank*, p. 50–51 ("Second Thornburgh Report"). Available from http://go.worldbank.org/1093GTKH40 (accessed on 31 December 2011).

[965] The principal goal of World Bank Group sanctions proceedings was to protect the Group's funds, not to 'punish' respondents; the sanctions imposed did not entail any form of physical coercion, nor even an obligation to repay money to the Bank. The requirements of due process were accordingly less stringent than in criminal or even civil proceedings.

[966] See Sanctions Procedures, article VII. Available from http://go.worldbank.org/CVUUIS7HZ0 (accessed on 31 December 2011).

[967] The term 'baseline' sanction means the sanction that would normally be imposed for a sanctionable practice before giving effect to any aggravating or mitigating factors.

4. *Letter of Reprimand*: In cases of truly minor misconduct or peripheral involvement, debarment or even conditional non-debarment might be disproportionate to the offense. In such cases, the Bank issued a letter of reprimand to the sanctioned party. Examples included cases where an affiliate of the respondent had been found to have some shared responsibility for misconduct because of an isolated lapse in supervision, but the affiliate was not in any way complicit in the misconduct.

5. *Restitution*: In appropriate cases, the sanctioned party might have been required to make restitution or provide other financial remedies to the borrower or to any other party, or to take other actions to remedy the harm that had been done by its misconduct.[968]

The choice of the appropriate sanction by the EO or the Sanctions Board was guided by the Sanctioning Guidelines, a public document that sought to enhance predictability, while maintaining sufficient room for the exercise of discretion by the EOs and the Sanctions Board in order to reflect the unique circumstances of each particular case.[969] The Guidelines included detailed treatment of aggravating and mitigating factors, with indicative ranges for increases (in the case of aggravating factors) and reductions (in the case of mitigating factors). Except when permanent debarment was imposed, parties debarred for a period in excess of 10 years might petition for a reduction of the period of debarment after 10 years had elapsed.

The Bank's sanctions system aimed not to punish but rather to rehabilitate, and to reintroduce those sanctioned entities back into the market after they had been 'made whole'. Thus, the system's baseline sanction was 'debarment with conditional release'.[970] Operating on the understanding that corruption tainted the market but that the free market was generally good for all involved, the aim was release and reintegration. Compliance with such measures was facilitated through the guidance offered by the Integrity Compliance Officer (ICO), who also monitored and decided whether the conditions had been satisfied.[971]

(ii) *Reforms of sanctions regime*

Year by year, the Bank's system has become more expansive, providing an ever more complete means of protecting the Bank and the projects that it has financed from the

[968] Appropriate cases might include those where the damage caused by the misconduct was clear and quantifiable. Restitution had not been imposed as of the end of 2011, largely due to lack of clear criteria to determine how to calculate the quantum to be restituted and how to determine the appropriate recipient. The Bank was presently considering ways in which restitution might be mainstreamed into its sanctions regime.

[969] See World Bank, World Bank Group Sanctioning Guidelines ("Sanctioning Guidelines"). Available from http://go.worldbank.org/CVUUIS7HZ0 (accessed on 31 December 2011). The Sanctioning Guidelines set out the various sanctions, the circumstances under which each should be imposed, and the various aggravating and mitigating factors that impinge on both the choice of sanction and on the length of debarment, when debarment or debarment with conditional release was imposed.

[970] See Leroy, A-M. and F. Fariello, *The World Bank Group Sanctions Process and Its Recent Reforms* (Washington, D.C., World Bank, 2012), p. 14–17.

[971] See Sanctioning Guidelines, part II.A; and Sanctions Procedures, article IX, section 9.03 (Compliance with Conditions for Non-Debarment and Release from Debarment). Available from http://go.worldbank.org (accessed on 31 December 2011).

deleterious effects of fraud and corruptions. Initiated in 1996, the Bank's sanction regime coincided with an increased focus on corruption as a development issue.[972] The reach of the Bank's sanctions regime has grown significantly: in 1999, corruption, fraud, and collusion were referred to in the Procurement and Consultant Guidelines.[973] In 2004, 'coercive practice' was added to the list of sanctionable practices, therein prohibiting the threatening of either competing bidders or of government officials.[974] In 2006, a fifth rubric of 'obstructive practices' was added to target deliberate actions that would materially impede n investigation, such as destroying evidence or threatening witnesses.[975] Moreover, the regime was expanded beyond fraud and corruption in the area of procurement to cover all fraud and corruption that might occur in connection with the use of Bank financing in the preparation and/or implementation of Bank-financed projected.[976] Those 2006 reforms were accompanied by new harmonized definitions of the first four sanctionable practices, as used by all of the five major Multilateral Development Banks (MDBs).[977]

In 2010, the Bank signed a cross-debarment accord with the other four major MDBs, allowing for the signatories to cross-debar firms and individuals found to have engaged in wrongdoing in MDB-financed development projects.[978] That agreement established as common among the five MDBs both the first four sanctionable practices, and the more-likely-than-not standard of proof.

(iii) *Specific issues in the recent reforms*

The most recent round of reforms were undertaken over a two-year period, starting in 2009 and culminating in the issuance of new Sanctions Procedures in January 2011. The principal changes to the system included the following:

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[972] Leroy, A-M. and F. Fariello, *The World Bank Group Sanctions Process and Its Recent Reforms* (Washington, D.C., World Bank, 2005), p. 9.

[973] All present and historical Guidelines are available at the World Bank website. See World Bank, Guidelines: Selection and Employment of Consultants by World Bank Borrowers, section 1.22 [hereinafter Consultant Guidelines]; and Guidelines: Procurement Under IBRD Loans and IDA Credits, section 1.14. Available from http://go.worldbank.org/U9IPSLUDC0 and http://go.worldbank.org/1KKD1KNT40, respectively (accessed on 31 December 2011).

[974] World Bank, *Reform of the World Bank's Sanctions Process*). Available from http://go.worldbank.org/VVY6KYS720 (accessed on 31 December 2011).

[975] *Ibid*., *Expansion of Sanction Beyond Procurement and Sanctioning of Obstructive Practices*. Available from http://go.worldbank.org/VVY6KYS720 (accessed on 31 December 2011).

[976] *Ibid*., *Sanctions Reform Expansion of Sanctions Regime Beyond Procurement and Sanctioning of Obstructive Practices*, President's Memorandum to the Executive Directors; concurrently, amended Sanctions Procedures were adopted, reflecting both the 2004 and 2006 rounds of sanctions reform.

[977] *Ibid*., Uniform Framework for Preventing and Combating Fraud and Corruption. Available from at http://go.worldbank.org/VVY6KYS720 (accessed on 31 December 2011).

[978] *Ibid*., "Cross-Debarment Accord Steps Up Fight Against Corruption". Available from http://go.worldbank.org/B699B73Q00 (accessed on 31 December 2011). Cross-debarment was permitted for any of the first four sanctionable practices, namely, corruption, fraud, collusion, and coercive practices.

a. Early temporary suspension

The possibility of temporary suspension of firms under investigation was introduced. That measure resulted from the fiduciary and reputational risks that the Bank faced when it had in its possession credible evidence that a firm or individual had engaged in fraud and corruption, and yet under the Bank's 'open eligibility' principles, that entity remained eligible to bid until formally sanctioned. Under that device, INT, on showing 'sufficient evidence' of a sanctionable practice, might seek respondent's early temporary suspension from the EO before going through the rigors of filing an SAE.[979]

b. Baseline sanction of debarment with conditional release

As previously noted, the 'baseline' sanction was changed from debarment to debarment with conditional release. Such a change befitted a system that attempted to rehabilitate rather than to punish. Changing the baseline sanction also removed the highly discretionary nature of the reinstatement decision.

c. Corporate groups

The Bank issued comprehensive guidance on the sanctioning of the affiliates of respondents, as well as the circumstances under which sanctions were imposed on successors and assigns. The key concept of 'control' was expressly defined as the ability to direct or cause the direction of the policies or operations of another entity.[980] That revision allowed for greater clarity as to the scope of sanctions.

d. Settlement of sanctions cases

The Bank allowed for an expedited, negotiated resolution of sanctions cases. Two types of settlements were allowed in the Bank's system: *Negotiated Resolution Agreements*, whereby INT and the respondent effectively ended sanctions proceedings in respect of the case with an agreed sanction, and *Deferral Agreements*, whereby sanctions proceedings were stayed for a period pending respondent's compliance with certain conditions and which would result in settlement upon compliance thereof. Settlements were subject to a number of checks and balances to ensure fairness and transparency, including review by the EO.

e. Increasing Transparency in the System

As the Bank moved to become more transparent, so, too, were attempts to make the Bank's sanctions regime more fair, transparent, and accountable. In January 2011, the Bank publicly released new Sanctioning Guidelines,[981] which served to balance predictability with sufficient and equitable flexibility, afford greater clarity about the imposition of

[979] See Sanctions Procedures, article II, section 2.01(c). Available from http://go.worldbank.org/CVUUIS7HZ0 (accessed on 31 December 2011).

[980] See Leroy A-M. and F. Fariello, *The World Bank Group Sanctions Process and Its Recent Reforms*, (Washington, D.C., World Bank, 2012), p. 17.

[981] Sanctioning Guidelines. Available from http://go.worldbank.org/CVUUIS7HZ0 (accessed on 31 December 2011).

sanctions, and in INT's negotiation of settlements.[982] In November 2011, the Bank released a detailed information note that described the whole of the Group's sanctions regime.[983] In December 2011, the Bank published the decisions of the appellate body of the Bank's sanctions regime in the Sanctions Board Law Digest.[984] The decisions produced by the Sanctions Board were fully reasoned and included relevant facts and the applied legal reasoning. Undisputed EO determinations were also published.[985]

(iv) *Conclusion*

Taken as a whole, the recent reforms to the World Bank's sanctions process have significantly improved the efficiency, effectiveness and transparency of the system. Some of the major components of the reforms, notably early temporary suspension and debarment with conditional release, were intended to strengthen the system by addressing vulnerabilities and closing 'loopholes' in the system. The adoption of new, publicly available Sanctioning Guidelines and the publication of Sanctions Board decisions and EO determinations enhanced the deterrence. The new guidance on corporate groups extended the reach of sanctions to all affiliates of respondents.

Such reforms were not simply an effort to 'get tough' on corruption. Private sector stakeholders should find much comfort in those reforms, in particular those that increased the transparency and accountability of the system and increased legal certainty. Settlements provided potential respondents with an efficient alternative means to resolve sanctions cases, one that provided both the Bank and Respondents with certainty of outcome. Model compliance standards gave respondents clarity for release from debarment.

The Bank Group's sanctions process has evolved over the years towards an increasingly quasi-judicial model. Features of that evolution included the creation of a two tier review process involving both the EO and an independent Sanctions Board, the introduction of concepts like early temporary suspension and settlements, the publication of cases and the consequent development of Sanctions Board 'jurisprudence'. However, the process remained administrative in nature. The Bank Group had not yet adopted (and probably would not, at least in the immediate future) the full panoply of rules that typify national civil or criminal systems. Sanctions, while serious, could not compare in severity of result to civil penalties or the deprivation of liberty that might potentially result from criminal proceedings. Due process and natural justice considerations were always calibrated to the stakes of the process in question: it was the potential outcome of proceedings that largely determined their nature. Moreover, the Bank had to continually bear in mind standards of good governance, efficiency and effectiveness in pursuing its overriding duty to exer-

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[982] Leroy, A-M. and F. Fariello, *The World Bank Group Sanctions Process and Its Recent Reforms* (Washington, D.C., World Bank, 2012), p. 19.

[983] World Bank, The World Bank Group's Sanctions Regime: Information Note. Available from http://go.worldbank.org/CVUUIS7HZ0 (accessed on 31 December 2011).

[984] *Ibid*., Sanctions Board Law Digest. Available from http://go.worldbank.org/S9PFFMD6X0 (accessed on 31 December 2011).

[985] See Sanctions Procedures, article X. section 10.01(b) and World Bank, Evaluation and Suspension Officer Determinations in Uncontested Proceedings. Available from http://go.worldbank.org/CVUUIS7HZ0 and http://go.worldbank.org/G7E00UXW90, respectively (accessed on 31 December 2011).

cise responsible stewardship of public funds. The ongoing effort to balance those various considerations would shape the future evolution of the World Bank's sanctions process.

(*b*) Other legal activities

In 2011, the World Bank Legal Vice Presidency was actively involved in the drafting of two legislative instruments: (a) Act to establish the legal capacity of the Adaptation Fund Board in Germany,[986] and (b) Constitution of the Consortium of International Agricultural Research Centers.[987]

[986] The text of the Act is available from http://www.adaptation—fund.org/system/files/2011_03_08_Act%20to%20establish%20the%201egal%20capacity%200f%20the%20AFB_February2011.pdf (accessed on 31 December 2011).

[987] The text of the Constitution is available from http://consortium.cgiar.org/wp-content/uploads/2011/12/Constitution-of-the-Consortium-as-an-International-Organsiation-FINAL-approved-June-3rd.pdf (accessed on 31 December 2011).

Annex

Articles on the Responsibility of International Organizations, 2011*

Part One. Introduction

Article 1. Scope of the present articles

1. The present articles apply to the international responsibility of an international organization for an internationally wrongful act.

2. The present articles also apply to the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organization.

Article 2. Use of terms

For the purposes of the present articles:

(*a*) "international organization" means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities;

(*b*) "rules of the organization" means, in particular, the constituent instruments, decisions, resolutions and other acts of the international organization adopted in accordance with those instruments, and established practice of the organization;

(*c*) "organ of an international organization" means any person or entity which has that status in accordance with the rules of the organization;

(*d*) "agent of an international organization" means an official or other person or entity, other than an organ, who is charged by the organization with carrying out, or helping to carry out, one of its functions, and thus through whom the organization acts.

Part Two. The internationally wrongful act of an international organization

Chapter I. General principles

Article 3. Responsibility of an international organization for its internationally wrongful acts

Every internationally wrongful act of an international organization entails the international responsibility of that organization.

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* Adopted by the International Law Commission at its sixty-third session, in 2011, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contained commentaries on the draft articles as adopted by the Commission, appeared in *Official Records of the General Assembly, Sixty-sixth session, Supplement No. 10* (A/66/10 and Add.1), also available on the website of the International Law Commission (http://www.un.org/law/ilc/, accessed on 31 December 2011). Text reproduced as reflected in the annex to General Assembly resolution 66/100 of 9 December 2011, in which the Assembly took note of the articles and commended them to the attention of Governments and international organizations without prejudice to the question of their future adoption or other appropriate action. The articles are reproduced in the present *Yearbook* owing to their relevance for international orgnizations.

Article 4. Elements of an internationally wrongful act of an international organization

There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:

(*a*) is attributable to that organization under international law; and

(*b*) constitutes a breach of an international obligation of that organization.

Article 5. Characterization of an act of an international organization as internationally wrongful

The characterization of an act of an international organization as internationally wrongful is governed by international law.

Chapter II. Attribution of conduct to an international organization

Article 6. Conduct of organs or agents of an international organization

1. The conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.

2. The rules of the organization apply in the determination of the functions of its organs and agents.

Article 7. Conduct of organs of a State or organs or agents of an international organization placed at the disposal of another international organization

The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.

Article 8. Excess of authority or contravention of instructions

The conduct of an organ or agent of an international organization shall be considered an act of that organization under international law if the organ or agent acts in an official capacity and within the overall functions of that organization, even if the conduct exceeds the authority of that organ or agent or contravenes instructions.

Article 9. Conduct acknowledged and adopted by an international organization as its own

Conduct which is not attributable to an international organization under articles 6 to 8 shall nevertheless be considered an act of that organization under international law if and to the extent that the organization acknowledges and adopts the conduct in question as its own.

Chapter III. Breach of an international obligation

Article 10. Existence of a breach of an international obligation

1. There is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned.

2. Paragraph 1 includes the breach of any international obligation that may arise for an international organization towards its members under the rules of the organization.

Article 11. International obligation in force for an international organization

An act of an international organization does not constitute a breach of an international obligation unless the organization is bound by the obligation in question at the time the act occurs.

Article 12. Extension in time of the breach of an international obligation

1. The breach of an international obligation by an act of an international organization not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of an international organization having a continuing character extends over the entire period during which the act continues and remains not in conformity with that obligation.

3. The breach of an international obligation requiring an international organization to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

Article 13. Breach consisting of a composite act

1. The breach of an international obligation by an international organization through a series of actions and omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

Chapter IV. Responsibility of an international organization in connection with the act of a State or another international organization

Article 14. Aid or assistance in the commission of an internationally wrongful act

An international organization which aids or assists a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for doing so if:

(*a*) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and

(*b*) the act would be internationally wrongful if committed by that organization.

Article 15. Direction and control exercised over the commission of an internationally wrongful act

An international organization which directs and controls a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for that act if:

(*a*) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and

(*b*) the act would be internationally wrongful if committed by that organization.

Article 16. Coercion of a State or another international organization

An international organization which coerces a State or another international organization to commit an act is internationally responsible for that act if:

(*a*) the act would, but for the coercion, be an internationally wrongful act of the coerced State or international organization; and

(*b*) the coercing international organization does so with knowledge of the circumstances of the act.

Article 17. Circumvention of international obligations through decisions and authorizations addressed to members

1. An international organization incurs international responsibility if it circumvents one of its international obligations by adopting a decision binding member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization.

2. An international organization incurs international responsibility if it circumvents one of its international obligations by authorizing member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization and the act in question is committed because of that authorization.

3. Paragraphs 1 and 2 apply whether or not the act in question is internationally wrongful for the member States or international organizations to which the decision or authorization is addressed.

Article 18. Responsibility of an international organization member of another international organization

Without prejudice to articles 14 to 17, the international responsibility of an international organization that is a member of another international organization also arises in relation to an act of the latter under the conditions set out in articles 61 and 62 for States that are members of an international organization.

Article 19. Effect of this Chapter

This Chapter is without prejudice to the international responsibility of the State or international organization which commits the act in question, or of any other State or international organization.

Chapter V. Circumstances precluding wrongfulness

Article 20. Consent

Valid consent by a State or an international organization to the commission of a given act by another international organization precludes the wrongfulness of that act in rela-

tion to that State or the former organization to the extent that the act remains within the limits of that consent.

Article 21. Self-defence

The wrongfulness of an act of an international organization is precluded if and to the extent that the act constitutes a lawful measure of self-defence under international law.

Article 22. Countermeasures

1. Subject to paragraphs 2 and 3, the wrongfulness of an act of an international organization not in conformity with an international obligation towards a State or another international organization is precluded if and to the extent that the act constitutes a countermeasure taken in accordance with the substantive and procedural conditions required by international law, including those set forth in Chapter II of Part Four for countermeasures taken against another international organization.

2. Subject to paragraph 3, an international organization may not take countermeasures against a responsible member State or international organization unless:

(*a*) the conditions referred to in paragraph 1 are met;

(*b*) the countermeasures are not inconsistent with the rules of the organization; and

(*c*) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible State or international organization concerning cessation of the breach and reparation.

3. Countermeasures may not be taken by an international organization against a member State or international organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

Article 23. Force majeure

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the act is due to force majeure, that is, the occurrence of an irresistible force or of an unforeseen event, beyond the control of the organization, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

(*a*) the situation of force majeure is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(*b*) the organization has assumed the risk of that situation occurring.

Article 24. Distress

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

(*a*) the situation of distress is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(*b*) the act in question is likely to create a comparable or greater peril.

Article 25. Necessity

1. Necessity may not be invoked by an international organization as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that organization unless the act:

(*a*) is the only means for the organization to safeguard against a grave and imminent peril an essential interest of its member States or of the international community as a whole, when the organization has, in accordance with international law, the function to protect the interest in question; and

(*b*) does not seriously impair an essential interest of the State or States towards which the international obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by an international organization as a ground for precluding wrongfulness if:

(*a*) the international obligation in question excludes the possibility of invoking necessity; or

(*b*) the organization has contributed to the situation of necessity.

Article 26. Compliance with peremptory norms

Nothing in this Chapter precludes the wrongfulness of any act of an international organization which is not in conformity with an obligation arising under a peremptory norm of general international law.

Article 27. Consequences of invoking a circumstance precluding wrongfulness

The invocation of a circumstance precluding wrongfulness in accordance with this Chapter is without prejudice to:

(*a*) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;

(*b*) the question of compensation for any material loss caused by the act in question.

Part Three. Content of the international responsibility of an international organization

Chapter I. General principles

Article 28. Legal consequences of an internationally wrongful act

The international responsibility of an international organization which is entailed by an internationally wrongful act in accordance with the provisions of Part Two involves legal consequences as set out in this Part.

Article 29. Continued duty of performance

The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible international organization to perform the obligation breached.

Article 30. Cessation and non-repetition

The international organization responsible for the internationally wrongful act is under an obligation:

(*a*) to cease that act, if it is continuing;

(*b*) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 31. Reparation

1. The responsible international organization is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of an international organization.

Article 32. Relevance of the rules of the organization

1. The responsible international organization may not rely on its rules as justification for failure to comply with its obligations under this Part.

2. Paragraph 1 is without prejudice to the applicability of the rules of an international organization to the relations between the organization and its member States and organizations.

Article 33. Scope of international obligations set out in this Part

1. The obligations of the responsible international organization set out in this Part may be owed to one or more States, to one or more other organizations, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

2. This Part is without prejudice to any right, arising from the international responsibility of an international organization, which may accrue directly to any person or entity other than a State or an international organization.

Chapter II. Reparation for injury

Article 34. Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this Chapter.

Article 35. Restitution

An international organization responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(*a*) is not materially impossible;

(*b*) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article 36. Compensation

1. The international organization responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage, including loss of profits insofar as it is established.

Article 37. Satisfaction

1. The international organization responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible international organization.

Article 38. Interest

1. Interest on any principal sum due under this Chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

Article 39. Contribution to the injury

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or international organization or of any person or entity in relation to whom reparation is sought.

Article 40. Ensuring the fulfilment of the obligation to make reparation

1. The responsible international organization shall take all appropriate measures in accordance with its rules to ensure that its members provide it with the means for effectively fulfilling its obligations under this Chapter.

2. The members of a responsible international organization shall take all the appropriate measures that may be required by the rules of the organization in order to enable the organization to fulfil its obligations under this Chapter.

Chapter III. Serious breaches of obligations under peremptory norms of general international law

Article 41. Application of this Chapter

1. This Chapter applies to the international responsibility which is entailed by a serious breach by an international organization of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible international organization to fulfil the obligation.

Article 42. Particular consequences of a serious breach of an obligation under this Chapter

1. States and international organizations shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 41.

2. No State or international organization shall recognize as lawful a situation created by a serious breach within the meaning of article 41, nor render aid or assistance in maintaining that situation.

3. Article 42 is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this Chapter applies may entail under international law.

Part Four. The implementation of the international responsibility of an international organization

Chapter I. Invocation of the responsibility of an international organization

Article 43. Invocation of responsibility by an injured State or international organization

A State or an international organization is entitled as an injured State or an injured international organization to invoke the responsibility of another international organization if the obligation breached is owed to:

(*a*) that State or the former international organization individually;

(*b*) a group of States or international organizations including that State or the former international organization, or the international community as a whole, and the breach of the obligation:

(i) specially affects that State or that international organization; or

(ii) is of such a character as radically to change the position of all the other States and international organizations to which the obligation is owed with respect to the further performance of the obligation.

Article 44. Notice of claim by an injured State or international organization

1. An injured State or international organization which invokes the responsibility of another international organization shall give notice of its claim to that organization.

2. The injured State or international organization may specify in particular:

(*a*) the conduct that the responsible international organization should take in order to cease the wrongful act, if it is continuing;

(*b*) what form reparation should take in accordance with the provisions of Part Three.

Article 45. Admissibility of claims

1. An injured State may not invoke the responsibility of an international organization if the claim is not brought in accordance with any applicable rule relating to the nationality of claims.

2. When the rule of exhaustion of local remedies applies to a claim, an injured State or international organization may not invoke the responsibility of another international organization if any available and effective remedy has not been exhausted.

Article 46. Loss of the right to invoke responsibility

The responsibility of an international organization may not be invoked if:

(*a*) the injured State or international organization has validly waived the claim;

(*b*) the injured State or international organization is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

Article 47. Plurality of injured States or international organizations

Where several States or international organizations are injured by the same internationally wrongful act of an international organization, each injured State or international organization may separately invoke the responsibility of the international organization for the internationally wrongful act.

Article 48. Responsibility of an international organization and one or more States or international organizations

1. Where an international organization and one or more States or other international organizations are responsible for the same internationally wrongful act, the responsibility of each State or organization may be invoked in relation to that act.

2. Subsidiary responsibility may be invoked insofar as the invocation of the primary responsibility has not led to reparation.

3. Paragraphs 1 and 2:

(*a*) do not permit any injured State or international organization to recover, by way of compensation, more than the damage it has suffered;

(*b*) are without prejudice to any right of recourse that the State or international organization providing reparation may have against the other responsible States or international organizations.

Article 49. Invocation of responsibility by a State or an international organization other than an injured State or international organization

1. A State or an international organization other than an injured State or international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to a group of States or international organizations, including the State or organization that invokes responsibility, and is established for the protection of a collective interest of the group.

2. A State other than an injured State is entitled to invoke the responsibility of an international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole.

3. An international organization other than an injured international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole and safeguarding the interest of the international community as a whole underlying the obligation breached is within the functions of the international organization invoking responsibility.

4. A State or an international organization entitled to invoke responsibility under paragraphs 1 to 3 may claim from the responsible international organization:

(*a*) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and

(*b*) performance of the obligation of reparation in accordance with Part Three, in the interest of the injured State or international organization or of the beneficiaries of the obligation breached.

5. The requirements for the invocation of responsibility by an injured State or international organization under articles 44, 45, paragraph 2, and 46 apply to an invocation of responsibility by a State or international organization entitled to do so under paragraphs 1 to 4.

Article 50. Scope of this Chapter

This Chapter is without prejudice to the entitlement that a person or entity other than a State or an international organization may have to invoke the international responsibility of an international organization.

Chapter II. Countermeasures

Article 51. Object and limits of countermeasures

1. An injured State or an injured international organization may only take countermeasures against an international organization which is responsible for an internationally wrongful act in order to induce that organization to comply with its obligations under Part Three.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State or international organization taking the measures towards the responsible international organization.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

4. Countermeasures shall, as far as possible, be taken in such a way as to limit their effects on the exercise by the responsible international organization of its functions.

Article 52. Conditions for taking countermeasures by members of an international organization

1. Subject to paragraph 2, an injured State or international organization which is a member of a responsible international organization may not take countermeasures against that organization unless:

(*a*) the conditions referred to in article 51 are met;

(*b*) the countermeasures are not inconsistent with the rules of the organization; and

(*c*) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible international organization concerning cessation of the breach and reparation.

2. Countermeasures may not be taken by an injured State or international organization which is a member of a responsible international organization against that organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

Article 53. Obligations not affected by countermeasures

1. Countermeasures shall not affect:

(*a*) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;

(*b*) obligations for the protection of human rights;

(*c*) obligations of a humanitarian character prohibiting reprisals;

(*d*) other obligations under peremptory norms of general international law.

2. An injured State or international organization taking countermeasures is not relieved from fulfilling its obligations:

(*a*) under any dispute settlement procedure applicable between it and the responsible international organization;

(*b*) to respect any inviolability of organs or agents of the responsible international organization and of the premises, archives and documents of that organization.

Article 54. Proportionality of countermeasures

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

Article 55. Conditions relating to resort to countermeasures

1. Before taking countermeasures, an injured State or international organization shall:

(*a*) call upon the responsible international organization, in accordance with article 44, to fulfil its obligations under Part Three;

(*b*) notify the responsible international organization of any decision to take countermeasures and offer to negotiate with that organization.

2. Notwithstanding paragraph 1 (b), the injured State or international organization may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken and, if already taken, must be suspended without undue delay if:

(*a*) the internationally wrongful act has ceased; and

(*b*) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible international organization fails to implement the dispute settlement procedures in good faith.

Article 56. Termination of countermeasures

Countermeasures shall be terminated as soon as the responsible international organization has complied with its obligations under Part Three in relation to the internationally wrongful act.

Article 57. Measures taken by States or international organizations other than an injured State or organization

This Chapter does not prejudice the right of any State or international organization, entitled under article 49, paragraphs 1 to 3, to invoke the responsibility of another international organization, to take lawful measures against that organization to ensure cessation of the breach and reparation in the interest of the injured State or organization or of the beneficiaries of the obligation breached.

Part Five. Responsibility of a State in connection with the conduct of an international organization

Article 58. Aid or assistance by a State in the commission of an internationally wrongful act by an international organization

1. A State which aids or assists an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(*a*) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(*b*) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of article 58.

Article 59. Direction and control exercised by a State over the commission of an internationally wrongful act by an international organization

1. A State which directs and controls an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(*a*) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(*b*) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of article 59.

Article 60. Coercion of an international organization by a State

A State which coerces an international organization to commit an act is internationally responsible for that act if:

(*a*) the act would, but for the coercion, be an internationally wrongful act of the coerced international organization; and

(*b*) the coercing State does so with knowledge of the circumstances of the act.

Article 61. Circumvention of international obligations of a State member of an international organization

1. A State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject matter of one of the State's international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation.

2. Paragraph 1 applies whether or not the act in question is internationally wrongful for the international organization.

Article 62. Responsibility of a State member of an international organization for an internationally wrongful act of that organization

1. A State member of an international organization is responsible for an internationally wrongful act of that organization if:

(*a*) it has accepted responsibility for that act towards the injured party; or

(*b*) it has led the injured party to rely on its responsibility.

2. Any international responsibility of a State under paragraph 1 is presumed to be subsidiary.

Article 63. Effect of this Part

This Part is without prejudice to the international responsibility of the international organization which commits the act in question, or of any State or other international organization.

Part Six. General provisions

Article 64. Lex specialis

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the interna-

tional responsibility of an international organization, or of a State in connection with the conduct of an international organization, are governed by special rules of international law. Such special rules of international law may be contained in the rules of the organization applicable to the relations between an international organization and its members.

Article 65. Questions of international responsibility not regulated by these articles

The applicable rules of international law continue to govern questions concerning the responsibility of an international organization or a State for an internationally wrongful act to the extent that they are not regulated by these articles.

Article 66. Individual responsibility

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of an international organization or a State.

Article 67. Charter of the United Nations

These articles are without prejudice to the Charter of the United Nations.

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

Optional Protocol to the Convention on the Rights of the Child on a Communications procedure. New York, 19 December 2011*

The States parties to the present Protocol,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Noting that the States parties to the Convention on the Rights of the Child (hereinafter referred to as "the Convention") recognize the rights set forth in it to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Reaffirming also the status of the child as a subject of rights and as a human being with dignity and with evolving capacities,

Recognizing that children's special and dependent status may create real difficulties for them in pursuing remedies for violations of their rights,

Considering that the present Protocol will reinforce and complement national and regional mechanisms allowing children to submit complaints for violations of their rights,

Recognizing that the best interests of the child should be a primary consideration to be respected in pursuing remedies for violations of the rights of the child, and that such remedies should take into account the need for child-sensitive procedures at all levels,

Encouraging States parties to develop appropriate national mechanisms to enable a child whose rights have been violated to have access to effective remedies at the domestic level,

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* Adopted at the sixty-sixth session of the General Assembly of the United Nations by resolution 66/138 of 19 December 2011.

Recalling the important role that national human rights institutions and other relevant specialized institutions, mandated to promote and protect the rights of the child, can play in this regard,

Considering that, in order to reinforce and complement such national mechanisms and to further enhance the implementation of the Convention and, where applicable, the Optional Protocols thereto on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, it would be appropriate to enable the Committee on the Rights of the Child (hereinafter referred to as "the Committee") to carry out the functions provided for in the present Protocol,

Have agreed as follows:

Part I. General Provisions

Article 1. Competence of the Committee on the Rights of the Child

1. A State party to the present Protocol recognizes the competence of the Committee as provided for by the present Protocol.

2. The Committee shall not exercise its competence regarding a State party to the present Protocol on matters concerning violations of rights set forth in an instrument to which that State is not a party.

3. No communication shall be received by the Committee if it concerns a State that is not a party to the present Protocol.

Article 2. General principles guiding the functions of the Committee

In fulfilling the functions conferred on it by the present Protocol, the Committee shall be guided by the principle of the best interests of the child. It shall also have regard for the rights and views of the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 3. Rules of procedure

1. The Committee shall adopt rules of procedure to be followed when exercising the functions conferred on it by the present Protocol. In doing so, it shall have regard, in particular, for article 2 of the present Protocol in order to guarantee child-sensitive procedures.

2. The Committee shall include in its rules of procedure safeguards to prevent the manipulation of the child by those acting on his or her behalf and may decline to examine any communication that it considers not to be in the child's best interests.

Article 4. Protection measures

1. A State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee pursuant to the present Protocol.

2. The identity of any individual or group of individuals concerned shall not be revealed publicly without their express consent.

Part II. Communications procedure

Article 5. Individual communications

1. Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments to which that State is a party:

(*a*) the Convention;

(*b*) the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;

(*c*) the Optional Protocol to the Convention on the involvement of children in armed conflict.

2. Where a communication is submitted on behalf of an individual or group of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 6. Interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned for its urgent consideration a request that the State party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 7. Admissibility

The Committee shall consider a communication inadmissible when:

(*a*) the communication is anonymous;

(*b*) the communication is not in writing;

(*c*) the communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention and/or the Optional Protocols thereto;

(*d*) the same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(*e*) all available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;

(*f*) the communication is manifestly ill-founded or not sufficiently substantiated;

(*g*) the facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State party concerned, unless those facts continued after that date;

(*h*) the communication is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit.

Article 8. Transmission of the communication

1. Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State party concerned as soon as possible.

2. The State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. The State party shall submit its response as soon as possible and within six months.

Article 9. Friendly settlement

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the obligations set forth in the Convention and/or the Optional Protocols thereto.

2. An agreement on a friendly settlement reached under the auspices of the Committee closes consideration of the communication under the present Protocol.

Article 10. Consideration of communications

1. The Committee shall consider communications received under the present Protocol as quickly as possible, in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications received under the present Protocol.

3. Where the Committee has requested interim measures, it shall expedite the consideration of the communication.

4. When examining communications alleging violations of economic, social or cultural rights, the Committee shall consider the reasonableness of the steps taken by the State party in accordance with article 4 of the Convention. In doing so, the Committee shall bear in mind that the State party may adopt a range of possible policy measures for the implementation of the economic, social and cultural rights in the Convention.

5. After examining a communication, the Committee shall, without delay, transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

Article 11. Follow-up

1. The State party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee a written response, including information on any action taken and envisaged in the light of the views and recommendations of the Committee. The State party shall submit its response as soon as possible and within six months.

2. The Committee may invite the State party to submit further information about any measures the State party has taken in response to its views or recommendations or implementation of a friendly settlement agreement, if any, including as deemed appropriate by the Committee, in the State party's subsequent reports under article 44 of the Convention, article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict, where applicable.

Article 12. Inter-State communications

1. A State party to the present Protocol may, at any time, declare that it recognizes the competence of the Committee to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under any of the following instruments to which the State is a party:

(*a*) the Convention;

(*b*) the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;

(*c*) the Optional Protocol to the Convention on the involvement of children in armed conflict.

2. The Committee shall not receive communications concerning a State party that has not made such a declaration or communications from a State party that has not made such a declaration.

3. The Committee shall make available its good offices to the States parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Convention and the Optional Protocols thereto.

4. A declaration under paragraph 1 of the present article shall be deposited by the States parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communications by any State party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party concerned has made a new declaration.

Part III. Inquiry procedure

Article 13. Inquiry procedure for grave or systematic violations

1. If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention or in the Optional Protocols thereto on the sale of children, child prostitution and child pornography or on the involvement of children in armed conflict, the Committee shall invite the State party to cooperate in the examination of the information and, to this end, to submit observations without delay with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State party concerned, as well as any other reliable information available to it, the Committee

may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State party, the inquiry may include a visit to its territory.

3. Such an inquiry shall be conducted confidentially, and the cooperation of the State party shall be sought at all stages of the proceedings.

4. After examining the findings of such an inquiry, the Committee shall transmit without delay these findings to the State party concerned, together with any comments and recommendations.

5. The State party concerned shall, as soon as possible and within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

6. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultation with the State party concerned, decide to include a summary account of the results of the proceedings in its report provided for in article 16 of the present Protocol.

7. Each State party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in the present article in respect of the rights set forth in some or all of the instruments listed in paragraph 1.

8. Any State party having made a declaration in accordance with paragraph 7 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General of the United Nations.

Article 14. Follow-up to the inquiry procedure

1. The Committee may, if necessary, after the end of the period of six months referred to in article 13, paragraph 5, invite the State party concerned to inform it of the measures taken and envisaged in response to an inquiry conducted under article 13 of the present Protocol.

2. The Committee may invite the State party to submit further information about any measures that the State party has taken in response to an inquiry conducted under article 13, including as deemed appropriate by the Committee, in the State party's subsequent reports under article 44 of the Convention, article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict, where applicable.

Part IV. Final provisions

Article 15. International assistance and cooperation

1. The Committee may transmit, with the consent of the State party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, together with the State party's observations and suggestions, if any, on these views or recommendations.

2. The Committee may also bring to the attention of such bodies, with the consent of the State party concerned, any matter arising out of communications considered under the present Protocol that may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States parties in achieving progress in the implementation of the rights recognized in the Convention and/or the Optional Protocols thereto.

Article 16. Report to the General Assembly

The Committee shall include in its report submitted every two years to the General Assembly in accordance with article 44, paragraph 5, of the Convention a summary of its activities under the present Protocol.

Article 17. Dissemination of and information on the optional protocol

Each State party undertakes to make widely known and to disseminate the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular with regard to matters involving the State party, by appropriate and active means and in accessible formats to adults and children alike, including those with disabilities.

Article 18. Signature, ratification and accession

1. The present Protocol is open for signature to any State that has signed, ratified or acceded to the Convention or either of the first two Optional Protocols thereto.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

Article 19. Entry into force

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 20. Violations occurring after the entry into force

1. The Committee shall have competence solely in respect of violations by the State party of any of the rights set forth in the Convention and/or the first two Optional Protocols thereto occurring after the entry into force of the present Protocol.

2. If a State becomes a party to the present Protocol after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to violations of the rights set forth in the Convention and/or the first two Optional Protocols thereto occurring after the entry into force of the present Protocol for the State concerned.

Article 21. Amendments

1. Any State party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States parties with a request to be notified whether they favour a meeting of States parties for the purpose of considering and deciding upon the proposals. In the event that, within four months of the date of such communication, at least one third of the States parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and, thereafter, to all States parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States parties that have accepted it.

Article 22. Denunciation

1. Any State party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 5 or 12 or any inquiry initiated under article 13 before the effective date of denunciation.

Article 23. Depositary and notification by the Secretary-General

1. The Secretary-General of the United Nations shall be the depositary of the present Protocol.

2. The Secretary-General shall inform all States of:

(*a*) signatures, ratifications and accessions under the present Protocol;

(*b*) the date of entry into force of the present Protocol and of any amendment thereto under article 21;

(*c*) any denunciation under article 22 of the present Protocol.

Article 24. Languages

1. The present Protocol, to which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

International Labour Organization

Convention on Domestic Workers. Geneva, 16 June 2011[a]

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on 1 June 2011, and

Mindful of the commitment of the International Labour Organization to promote decent work for all through the achievement of the goals of the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization, and

Recognizing the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for women and men workers with family responsibilities, greater scope for caring for ageing populations, children and persons with a disability, and substantial income transfers within and between countries, and

Considering that domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights, and

Considering also that in developing countries with historically scarce opportunities for formal employment, domestic workers constitute a significant proportion of the national workforce and remain among the most marginalized, and

Recalling that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided, and

Noting the particular relevance for domestic workers of the Migration for Employment Convention (Revised), 1949 (No. 97),[b] the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143),[c] the Workers with Family Responsibilities Convention, 1981 (No. 156),[d] the Private Employment Agencies Convention, 1997 (No. 181),[e] and the Employment Relationship Recommendation, 2006 (No. 198),[f] as well as of the ILO Multilat-

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[a] Adopted by the International Labour Conference at its one hundredth session held in Geneva from 1 to 17 June 2011.

[b] United Nations, *Treaty Series*, vol. 120, p. 71.

[c] *Ibid*., vol. 1120, p. 323.

[d] *Ibid*., vol 1331, p. 295.

[e] *Ibid*., vol. 2115, p. 249.

[f] The full text of the Recommendation is available from http://www.ilo.org/ilolex/cgi-lex/convde.pl?R198 (accessed on 31 December 2011).

eral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration (2006),[g] and

Recognizing the special conditions under which domestic work is carried out that make it desirable to supplement the general standards with standards specific to domestic workers so as to enable them to enjoy their rights fully, and

Recalling other relevant international instruments such as the Universal Declaration of Human Rights,[h] the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights,[i] the International Convention on the Elimination of All Forms of Racial Discrimination,[j] the Convention on the Elimination of All Forms of Discrimination against Women,[k] the United Nations Convention against Transnational Organized Crime,[l] and in particular its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children[m] and its Protocol against the Smuggling of Migrants by Land, Sea and Air,[n] the Convention on the Rights of the Child[o] and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[p] and

Having decided upon the adoption of certain proposals concerning decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention; adopts this sixteenth day of June of the year two thousand and eleven the following Convention, which may be cited as the Domestic Workers Convention, 2011.

Article 1

For the purpose of this Convention:

(a) the term "domestic work" means work performed in or for a household or households;

(b) the term "domestic worker" means any person engaged in domestic work within an employment relationship;

(c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

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[g] The full text is available from http://www.ilo.org/asia/whatwedo/publications/WCMS_146243/lang--en/index.htm (accessed on 31 December 2011).

[h] General Assembly resolution 217 A (III) of 10 December 1948.

[i] United Nations, *Treaty Series*, vol. 999, p. 171.

[j] *Ibid*., vol. 660, p. 195.

[k] *Ibid*., vol. 1249, 13.

[l] *Ibid*., vol. 2225, p. 209.

[m] *Ibid*., vol. 2237, p. 319.

[n] *Ibid*., vol. 2241, p. 480.

[o] *Ibid*., vol. 1577, p. 3.

[p] *Ibid*., vol. 2220, p. 3.

Article 2

1. The Convention applies to all domestic workers.

2. A Member which ratifies this Convention may, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, exclude wholly or partly from its scope:

(a) categories of workers who are otherwise provided with at least equivalent protection;

(b) limited categories of workers in respect of which special problems of a substantial nature arise.

3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

Article 3

1. Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.

2. Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

3. In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

Article 4

1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138),[q] and the Worst Forms of Child Labour Convention, 1999 (No. 182),[r] and not lower than that established by national laws and regulations for workers generally.

[q] *Ibid*., vol. 1015, p.297.

[r] *Ibid*., vol. 2133, p. 161.

2. Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

Article 5

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

Article 6

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Article 7

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

(a) the name and address of the employer and of the worker;

(b) the address of the usual workplace or workplaces;

(c) the starting date and, where the contract is for a specified period of time, its duration;

(d) the type of work to be performed;

(e) the remuneration, method of calculation and periodicity of payments;

(f) the normal hours of work;

(g) paid annual leave, and daily and weekly rest periods;

(h) the provision of food and accommodation, if applicable;

(i) the period of probation or trial period, if applicable;

(j) the terms of repatriation, if applicable; and

(k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

Article 8

1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.

2. The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.

3. Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.

4. Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

Article 9

Each Member shall take measures to ensure that domestic workers:

(a) are free to reach agreement with their employer or potential employer on whether to reside in the household;

(b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and

(c) are entitled to keep in their possession their travel and identity documents.

Article 10

1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.

2. Weekly rest shall be at least 24 consecutive hours.

3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

Article 11

Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.

Article 12

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.

2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments

in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Article 13

1. Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Article 14

1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Article 15

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:

(a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;

(b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;

(c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;

(d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and

(e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Article 16

Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Article 17

1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.

2. Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.

3. In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

Article 18

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers' and workers' organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Article 19

This Convention does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

Article 20

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 21

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

Article 22

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

Article 23

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 24

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered.

Article 25

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 26

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 22, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 27

The English and French versions of the text of this Convention are equally authoritative.

Chapter V

DECISIONS OF THE ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS[1]

A. United Nations Dispute Tribunal

By resolution 66/237 of 24 December 2011, entitled "Administration of justice at the United Nations", the General Assembly took note of the report of the Advisory Committee on Administrative and Budgetary Questions, decided to extend the mandate for the three ad litem judges of the Dispute Tribunal for one year, subject to review and possible extension for a further year.

In 2011, the United Nations Dispute Tribunal in New York, Geneva and Nairobi issued a total of 219 judgments. Summaries of 13 selected judgments are reproduced below.

1. Judgment No. UNDT/2011/005 (10 January 2011): Comerford-Verzuu v. Secretary-General of the United Nations[2]

Admissibility *ratione materiae* and *ratione temporis*—Tribunal has a duty to raise on its own motion issues relating to jurisdiction and admissibility—Decision of the Office of Internal Oversight Services refusing to carry out an investigation is an administrative decision appealable to the Tribunal—Right of Staff member to access to justice—Confirmative decision—Renewed request does not constitute a new administrative decision for the purposes of calculating time limits

On 30 November 2007, the Applicant filed an appeal with the former United Nations Administrative Tribunal against the decision of the Office of Internal Oversight Services ("OIOS") not to open an investigation following her complaint against the Administra-

[1] In view of the large number of judgments which were rendered in 2011 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/2011/001 to UNDT/2011/219 of the United Nations Dispute Tribunal, Judgments Nos. 2011-UNAT-101 to 2011-UNAT-188 of the United Nations Appeals Tribunal, Judgments Nos. 2954 to 3050 of the Administrative Tribunal of the International Labour Organization, Decisions Nos. 447 to 460 of the World Bank Administrative Tribunal, and Judgment Nos. 2011–1 to 2011–2 of the International Monetary Fund Administrative Tribunal, see, respectively, documents UNDT/2011/001 to UNDT/2011/219; 2011-UNAT-101 to 2011-UNAT-188; *Judgments of the Administrative Tribunal of the International Labour Organization: 110th and 111th Sessions; World Bank Administrative Tribunal Reports, 2011; and International Monetary Fund Administrative Tribunal Reports, Judgment No. 2011–1 to 2011–2.*

[2] Judge Jean-François Cousin (Geneva).

tor of the United Nations Development Programme ("UNDP") and the Director, Office of Legal and Procurement Support, UNDP, in relation to the death of her husband in the Democratic Republic of the Congo, while on mission as a UNDP staff member. On 11 July 2007, the Joint Appeals Board ("JAB") had issued a report in which, while declaring the appeal admissible *ratione temporis* and *ratione materiae*, it made no recommendation in favour of the Applicant. As the case could not be decided by the Administrative Tribunal before its abolition on 31 December 2009, it was transferred to the Dispute Tribunal on 1 January 2010.

In its Judgment, the Dispute Tribunal clarified that it was not bound by the conclusions of the JAB with regard to the admissibility of the application, and that it was on the contrary bound in all cases, including those where the issue is not raised by the parties, to verify whether its Statute, or the Statute of the former Administrative Tribunal, grants it jurisdiction to rule on the lawfulness of an administrative decision.

On the question whether the decision contested was an appealable administrative decision, the Tribunal considered that, while the General Assembly intended to confer "operational independence" to OIOS, it must, in stating that the Office acts under the authority of the Secretary-General, have intended to acknowledge that the Secretary-General was administratively responsible for any breaches or illegalities OIOS might commit. The Tribunal therefore found itself confronted with two principles which were difficult to reconcile: on the one hand, the "operational independence" of OIOS and, on the other, the binding nature of the request to the Secretary-General for review of management evaluation of the decision taken by OIOS in the exercise of its investigative functions. The Tribunal declared that, when faced with apparently contradictory instruments of equal value, it must necessarily give precedence to the staff member's right of access to justice. It concluded therefore that the fact that the Secretary-General may not modify the OIOS decision cannot operate to prevent the staff member from contesting it before the Tribunal, and that the decision of OIOS refusing to carry out the investigation requested by the Applicant was an administrative decision appealable to the Tribunal.

With regard to the admissibility *ratione temporis* of the application, the Tribunal noted that where the Administration fails to raise the lateness of a staff member's request for review of the decision, the Tribunal must do so on its own motion, because neither it nor the Administration has any right to waive an instrument setting time limits for appeals, unless in exceptional circumstances or in cases where the staff member has, before the expiration of the time limit, expressly requested an extension. Referring to its own case law (*Ryan* UNDT/2010/174 and *Bernadel* UNDT/2010/210), as well as that of the Appeals Tribunal (*Sethia* 2010-UNAT-079), according to which confirmative decisions subsequent to the contested administrative decision cannot be appealed, the Tribunal observed that the Applicant did not raise any new circumstances of fact or law dating from after the original administrative decision that might have obliged OIOS to take a new decision. Therefore, the Tribunal found that, by submitting her request for review to the Secretary-General more than six months after receiving notification of the contested decision, the Applicant was out of time and, therefore, it rejected the application as having been filed too late.

2. *Judgment No. UNDT/2011/012 (13 January 2011): Tolstopiatov v. Secretary-General of the United Nations*[3]

Compensation—Determination of compensable period—Heads of compensation—Loss of income—Medical and dental insurance—Entitlements such as repatriation grants, travel costs—Pension benefits—Offset—Duty to mitigate loss

In its Judgment UNDT/2010/147, the Dispute Tribunal held that the United Nations Children's Fund (UNICEF) had breached its obligations to the Applicant under his terms of employment. Since the Applicant was a UNICEF staff member on an abolished post, it was found that during his noticed period (from the time he was notified of his separation until it was implemented) UNICEF did not follow its own mandatory procedures for granting preferential treatment when the Applicant applied for some positions, and UNICEF did not comply with its obligation to offer meaningful recruitment assistance to the Applicant.

The issue to be determined by the Tribunal in the present Judgment was the compensation owing to the Applicant for the breach by UNICEF of its obligations under his terms of employment. The Tribunal preliminarily recalled that the very purpose of compensation is to place the staff member in the same position he or she would have been in, had the Organization complied with its contractual obligations. The Tribunal first examined the likelihood that the Applicant would have been offered a hypothetical new contract with UNICEF, and thereafter, where relevant, the characteristics of this new contract and any applicable offsets in the award of damages.

In the Tribunal's view, it was reasonable to assume that the Applicant would have been offered a new contract, had UNICEF properly complied with its own rules. The Tribunal found that, if UNICEF had fulfilled its obligations, this new contract would have been a two-year fixed-term appointment with a possibility of renewal. The Tribunal, however, considered that it could not be assumed that this contract would automatically have been renewed indefinitely and therefore limited the compensable period of time for lost compensation to a two-year term.

The Tribunal found that the Applicant was entitled to compensation for income loss under the hypothetical new contract, which included health and dental insurance subsidies. It further found that the Applicant was entitled to compensation for repatriation grant, travel, shipment, accrued annual leave and termination indemnity, in accordance with his rights under the hypothetical new contract.

In assessing the loss of earning capacity, the Tribunal recalled the principle in the case of *Anaki* 2010-UNAT-095, in which the Appeals Tribunal found that "compensation may only be awarded if it has been established that the staff member actually suffered damages". The Tribunal found that there was no basis for awarding compensation on the grounds that the Applicant had failed to substantiate the allegations on which he supported his claim, for instance, how the early retirement influenced his employment marketability, what job opportunities he had lost as a result and how the so-called proportional calculation was warranted. The Tribunal also rejected the claims for compensation for loss of pension and for non-economic compensation.

[3] Judge Marilyn J. Kaman (New York).

The Tribunal then determined that it was necessary to deduct, as an offset from compensation owing to the Applicant, any amounts received by him following his actual separation from UNICEF. The Tribunal observed that the Applicant had received overpayments made to him during the period of Special Leave Without Pay, and that he had made no attempts to notify UNICEF to rectify the situation. The Tribunal held that whether phrased in terms of equitable estoppel, the doctrine of clean hands or the principles of good faith and equity, the Applicant remained liable to UNICEF for the overpayments made to him.

The Tribunal finally identified a basic principle of law, according to which a party is obliged to mitigate his or her losses. This means that the aggrieved party must act reasonably following a breach and may recover only for those damages that arose naturally from the breach or could have been contemplated by the parties. In the employment context of the United Nations, the natural demand is for the staff member to demonstrate that s/he had sought other employment to limit her/his income loss. For the Applicant, mitigation considerations would include, *inter alia*, the professional qualifications of the Applicant, his attempts to find other employment following abolishment of his post, reasons for not seeking work, his age, and other efforts identified by him as amounting to mitigation. The Tribunal found that the Applicant failed to mitigate his loss by not adequately seeking other employment, and as such, reduced the compensation owing for loss of income by 25 per cent.

Taking into consideration all the aforementioned factors, the Tribunal ordered the Respondent to pay the Applicant USD 97,324.04 as compensation.

3. *Judgment No. UNDT/2011/032 (10 February 2011): Obdeijn v. Secretary-General of the United Nations*[4]

Notification of non-renewal of a fixed-term contract is an administrative decision—Obligation to disclose reasons for the non-renewal—Adverse inference from the Administration's refusal to disclose the reasons of the contested decision—An administrative decision taken without reason is arbitrary, capricious and unlawful—Staff member has right to have administrative decision properly reviewed

The Applicant contested the decision not to extend his fixed-term contract with the United Nations Population Fund ("UNFPA") beyond its expiration date of 2 April 2009. He alleged, *inter alia*, that the decision was improper because it was motivated by extraneous factors. On numerous occasions during the period of October 2008 to February 2009, the Applicant sought clarification as to the reasons for the initial six-month renewal of his contract and non-renewal thereafter. The Respondent refused to disclose the reasons for the contested decision to the Applicant or to the Tribunal, asserting that, in accordance with the UNFPA Policies and Procedures Manual, it was not required to provide reasons for a decision not to renew an appointment.

The Tribunal first determined that the decision not to renew a staff member's contract was an administrative decision within article 2.1 of the Statute as it necessarily affects the staff member's terms of appointment, namely, the duration of his or her contract. As the

[4] Judge Ebrahim-Carstens (New York).

Statute did not distinguish a decision not to renew and any other administrative decision, such a decision would not differ, in any significant respect, in its legal character from any other administrative decision made under the contract of employment and would be subject to the usual standards of review. Accordingly, it may be challenged in the same way as any other administrative decision. Furthermore, the Tribunal found that, the scope of the contested decision would not be the decision to set a certain expiration date, made at the time of the entry into contract, but the later decision not to extend his appointment beyond its original expiration date.

Turning to the question of the propriety of the contested administrative decision, the Tribunal emphasised that the employment relationship of international civil servants is governed by the internal law prevailing within the organization. In the adjudication of employment disputes that come before them, however, international administrative tribunals may rely on, among other sources, general principles of law—including international human rights law, international administrative law and labour law—which may be derived from, *inter alia*, international treaties and international case law. The Tribunal stated that any administrative decision entails a reasoned determination arrived at after consideration of relevant facts since there is a duty and requirement on institutions to act fairly, transparently and justly in their dealings with staff members. Like any other administrative decision, a decision not to renew a staff member's contract must be reasoned, as a decision taken without reasons would be arbitrary, capricious, and therefore unlawful. The Tribunal found that the UNFPA Manual could not have the effect of absolving the Respondent from the obligation to disclose the reasons for the contested decision, thus rendering the decision not reviewable and ousting the jurisdiction of the Tribunal. Whilst the Tribunal recognized the Organization's discretionary authority not to renew a fixed-term contract, the exercise of that authority is not immune to review by the Tribunal. In view of the Respondent's refusal to disclose the actual reasons for the contested decision and rebut the staff member's allegations of impropriety, the Tribunal was left with no choice but to draw an adverse inference and conclude that the contested decision was arbitrary, capricious, and therefore unlawful.

Although the findings above were sufficient to render the contested decision unlawful, the Tribunal made some additional observations concerning the non-disclosure of the reasons for the decision to the Applicant. It noted that reasons must generally be disclosed at the time of the notification of the decision, and they also most certainly must be disclosed when requested by the staff member, as well as at the management evaluation stage. The Tribunal pointed out that the right to have an administrative decision properly reviewed is part of a staff member's contract of employment. To merely state in response to a staff member's inquiries—as the Administration did in this case—that the contract will not be renewed because there is no obligation to renew it subjects the administrative decision to circular reasoning and frustrates the staff member's right of an appeal against administrative decisions under article 2.1 of the Statute. This is a fundamental right of every staff member and it must be allowed to be exercised meaningfully. The Tribunal therefore found that the Administration breached its obligation to disclose the reasons for the contested decision to the Applicant, particularly in response to his requests.

The Tribunal therefore ordered compensation in the amount equivalent to six months' net base salary and entitlements, VI step, with retroactive interest, for actual economic loss suffered. Being satisfied that any reasonable person would suffer emotional distress as a

result of the sustained lack of response and uncertainty created in these particular circumstances, the Tribunal further awarded USD 8,000 as compensation for emotional distress.

4. *Judgment No. UNDT/2011/050 (10 March 2011): Ostensson v. Secretary-General of the United Nations*[5]

Receivability *ratione materiae*—Scope of ST/SGB/2208/5—Staff members have the right to submit a harassment complaint and have it properly reviewed—Standard for initiating an investigation under ST/SGB/2208/5—Duty to act expeditiously—Compensation for moral damage—Principle of proportionality

The Applicant had been working for the United Nations Conference on Trade and Development ("UNCTAD") in various capacities when he applied for the position of Head of Commodities Branch, but without success. On 7 July 2008, the Applicant filed a formal complaint pursuant to the Secretary-General's bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), alleging a series of incidents which he claimed amounted to harassment on the part of his direct supervisor, the newly appointed Head of the Commodities Branch. The Administration decided not to investigate his allegations on the grounds that the matter did not amount to harassment but rather fell into the category of disagreements on work performance or on other work-related issues. The Applicant was so informed on 15 October 2008. On 16 January 2009, the Applicant filed a claim with the Joint Appeals Board, challenging the decision not to take action of the harassment complaint that he had submitted on 7 July 2008. The case was subsequently transferred to the United Nations Dispute Tribunal, upon the abolishment of the Joint Appeals Boards.

The Tribunal determined from the outset that it had jurisdiction to examine the Administration's actions and omissions following a request for investigation submitted pursuant to ST/SGB/2008/5.

The Tribunal then considered the scope of ST/SGB/2008/5 and found that a literal interpretation of section 1.2 left no room for excluding systematically "[d]isagreement on work performance or on other work-related issues". Furthermore, the Tribunal stated that the right to submit a harassment complaint and to have it promptly reviewed is a key element of the policy set out in ST/SGB/2008/5 and a fundamental procedural safeguard for staff members. The Tribunal noted that the impact of the policy would be defeated if the duty to conduct a formal fact-finding investigation were reduced to cases where prohibited conduct had already been proven; rather, a fact-finding investigation ought to be initiated if the overall circumstances of the particular case offer at least a reasonable chance that the alleged facts may amount to prohibited conduct within the meaning of ST/SGB/2008/5. Even if some of the reported incidents, considered individually, may not necessarily amount to harassment, the allegations taken together regarding events that happened within a short time-span may warrant an investigation. Accordingly, the Tribunal found that the Administration erred in finding that the Applicant's complaint did not provide sufficient grounds to warrant a formal fact-finding investigation.

On the issue of compensation, the Tribunal, referring to the case-law of the Appeals Tribunal, found that, while the Applicant did not suffer any material damage, he had

[5] Judge Thomas Laker (Geneva).

endured unnecessary psychological distress due to the Administration's failure to discharge its duty to act expeditiously. The Tribunal then recalled that the principle of proportionality is the first and foremost guiding principle for the calculation of compensation and requires that all the circumstances of the case be taken into account, including the nature of the irregularity (*Solanki* UNAT-2010–044), the number and intensity of breaches, the impact thereof on the applicant (*Wu* UNDT-2009–084), and the values and principles at stake (*Applicant* UNDT/2010/148). In this view, the Tribunal found that the Applicant must be compensated in the amount of USD 10,000 for the moral injury suffered as a result of the decision not to investigate his harassment complaint.

5. *Judgment No. UNDT/2011/098 (10 June 2011): Mezoui v. Secretary-General of the United Nations*[6]

Procedural irregularities in a selection process—Tribunal's standard of review limited to verifying the regularity of the procedure followed and determining factual mistake or manifest error of assessment—Determination of compensation guided by nature of irregularity and chance of success—Calculation of material damage—Moral damages—Non award of compensation where previous compensation exceeds amount set by the tribunal—Abuse of proceedings

In July 2009, the Applicant filed an application with the United Nations Dispute Tribunal contesting the decision not to promote her to the position of Director (D-2) in the Office for Economic and Social Council Support and Coordination ("OESC") of the Department of Economic and Social Affairs ("DESA").

The Applicant claimed that a number of substantial procedural irregularities had tainted the selection process, namely that the Senior Review Group had failed to preapprove the evaluation criteria as required by the provisions of Administrative Instruction ST/AI/2002/4; that a number of irregularities had been committed during her interview, held on 7 March 2006; that her evaluation card had been falsified; and that she had been the victim of discrimination.

On the recommendation of the Joint Appeals Board, the Secretary-General had previously awarded the Applicant the amount of USD 23,400 (three months' net base salary) in compensation for an error in the consideration of her academic qualifications during the selection process.

The Tribunal stated that, given the discretionary character of selection decisions, its control of legality over those decisions is limited to assessing the regularity of the procedure followed and verifying that no factual mistake or manifest error in the assessment were committed.

The Tribunal found that, in addition to the error concerning the Applicant's academic qualifications, the selection process for the post had been tainted by numerous irregularities, which the Tribunal found to be substantial since they concerned the establishment of the evaluation criteria and the Senior Review Group's control over the respect of those criteria. The Tribunal found, in particular, that the Senior Review Group had failed to preapprove the evaluation criteria and had met without having developed and published its own procedures, as required by Secretary-General bulletin ST/SGB/2005/4. In addition,

[6] Judge Jean François Cousin (Genève).

the Tribunal observed that the Under-Secretary-General for Economic and Social Affairs had not complied with the provisions of Administrative Instruction ST/AI/1999/9, which required that he explain the reasons for choosing a male candidate over a female candidate for the post. In the present case, the panel had recommended a male candidate after it had interviewed four internal candidates (of whom the Applicant was the only female) and four external candidates (two males and two females). The Tribunal also held that the participation of the Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs in both the selection panel and the Senior Review Group constituted an irregularity, since it gave rise to a conflict of interest. On the other hand, the Tribunal did not find any irregularity in the conduct of the Applicant's interview by the panel. It further indicated that, taking into account the limited character of its control, it could not substitute itself to the panel's evaluation of the competencies of the Applicant at the interview.

The Tribunal therefore declared the unlawfulness of the selection process as a whole, and proceeded to determine the compensation to be awarded to the Applicant. In this regard, the Tribunal recalled the judgments of the United Nations Appeals Tribunal in the *Solanki* and *Ardisson* cases, in which the Appeals Tribunal has indicated that the determination the amount of compensation due to the Applicant should be guided by two considerations: the nature of the irregularity that led to the annulment of the contested administrative decision; and the realistic chance that the Applicant would have been promoted had the correct procedure been followed.

The Tribunal calculated the material damage suffered by the Applicant as corresponding to the difference between her net take-home pay at the D-1 level and that which she would have received at the D-2 level between the earliest date on which her promotion could have been implemented and the date when she retired. The Tribunal set this amount at USD 17,000, including interest, to which it added a lump sum of USD 5,000 for loss of pension benefits (for a total of USD 22,000). Given the characteristics of the case and the number of candidates that were interviewed, the Tribunal held that the Applicant's chances of being promoted were one out of four. Accordingly, it fixed the appropriate compensation at USD 5,500 (i.e. one fourth of USD 22,000). The Tribunal further awarded USD 2,000 in moral damages for the unrest created by the procedural irregularities.

The Tribunal ultimately decided not to order any award of compensation on the grounds that the compensation already awarded by the Secretary-General on the recommendation of the Joint Appeals Board exceeded the amount set by the Tribunal.

The Tribunal further considered that, in the course of the proceedings, the Applicant had engaged in various misleading manoeuvres and had disregarded several orders issued by the Tribunal. The Tribunal, accordingly, awarded costs against the Applicant (USD 2,000) for abusing the proceedings before it.

The Tribunal decided not to apply article 10, paragraph 8, of its Statute, considering that the number and seriousness of the irregularities resulted more from collective negligence in the implementation of the applicable rules than from individual misconduct.

6. *Judgment No. UNDT/2011/115 (27 June 2011): Ibrahim v. Secretary-General of the United Nations*[7]

Disciplinary proceedings—Scope of application of ST/AI/371—Standard to initiate a preliminary investigation—"Unsatisfactory conduct" and "Reason to believe" that a misconduct occurred—Due process and right to legal assistance in the course of preliminary investigation—Due process rights during disciplinary proceedings–Burden of proof in allegations of bias or improper motivation—Criteria for the suspension of a staff member during disciplinary proceedings—Responsibility of the Respondent for delays in disciplinary proceedings—Removal of a working dog from staff member

The Applicant worked as a Security Officer and dog handler with the Department of Security and Safety (DSS) Canine Unit. On or about 3 July 2007, some of the Applicant's colleagues made a report to the DSS Internal Affairs Unit (IAU) that the Applicant had conducted himself in an improper manner in connection with his service as a member and leader of the Canine Unit, including that he had physically abused the working dog, "Buddy", that had been assigned to him. The IAU initiated a preliminary investigation, after which Buddy was taken away from the Applicant. The Applicant was also transferred to another unit and was suspended with full pay, and disciplinary charges were brought against him. The Applicant was eventually cleared of all allegations, but Buddy was not returned to him and he was not transferred back to the DSS Canine Unit.

The Tribunal first determined that the administrative instruction ST/AI/371 (Revised disciplinary measures and procedures) was applicable to a disciplinary case such as the present one. Under the provisions of its Statute, it could not set aside the application of an administrative issuance in force, unless it found that its provisions were in breach of an instrument that had a higher authority in the legal hierarchy of the United Nations normative framework. The Tribunal recognised that the provisions of ST/AI/371 was ambiguous and that clearer legislative guidance would be helpful in this regard, but for the purposes of the present case, it did not detect any inconsistencies between ST/AI/371 and General Assembly resolution 48/218B. On the contrary, the Tribunal found that it could not consider the United Nations Development Programme guidelines since the Applicant had no work relationship with the Programme.

The Tribunal then noted that the standard to initiate a preliminary investigation under section 2 of ST/AI/371 involved a two-step process: (a) the alleged behaviour must amount to possible "unsatisfactory conduct", i.e., misconduct under former staff rule 110.1; and (b) there must be "reason to believe" that the staff member in question behaved in such a way. In light of the staff rules and regulations and the Canine Manual, the Tribunal found that the Applicant's alleged abuse of Buddy would have constituted possible misconduct. Moreover, the Tribunal found that, given the grave nature of the allegations of dog abuse against the Applicant, it was proper for the Organization to initiate a preliminary investigation under section 2 of ST/AI/371.

The Tribunal then turned to the question whether the preliminary investigation against the Applicant was properly conducted. It found that the Applicant was not denied the right to legal assistance and had been properly informed of his right to such assistance,

[7] Judge Marilyn J. Kaman (New York).

and concluded that the Administration did not commit any due process violations in this regard. The Tribunal further noted that the Organization has an obligation to make decisions that are proper and in good faith and the discretion of the Secretary-General is not unfettered. In this regard, it reasoned that it was proper, during the preliminary investigation, to remove Buddy from the Applicant, observing that since working dogs are in the custody of the United Nations, the Organization, as their custodian, has the full right to make decisions regarding them, and to transfer the Applicant to another unit.

Furthermore, the Tribunal found that the disciplinary proceedings against the Applicant were conducted according to appropriate due process standards set forth in ST/AI/371, and that the decision to suspend the Applicant from duty with full pay pending disciplinary proceedings under former staff rule 110.2 and ST/AI/371, section 4, was proper, given the grave nature of the misconduct charge for abuse of a working dog in the Canine Unit.

With regard to the issue whether the disciplinary proceedings were improperly delayed, the Tribunal reaffirmed its previous jurisprudence according to which the Respondent is responsible for any delays and/or flaws in these proceedings. It found, however, that the disciplinary proceedings were not unduly delayed in the present case, and that it was proper to maintain the suspension of the Applicant while the disciplinary case against him was pending.

Finally, the Tribunal held that it was proper not to return the Applicant to his former job with the Canine Unit after the disciplinary case against him had been dismissed, since the Applicant did not show that there existed any adversative attitude towards him. The Tribunal also considered that it was proper not to return Buddy to the Applicant after the disciplinary case against him had been dismissed, since, once a staff member transfers to a position outside from the Canine Unit, he/she does not have any entitlement to keep the dog.

Having rejected all the contentions made by the Applicant, the Tribunal decided that the latter was not entitled to any compensation as he was not able to demonstrate any sort of "pecuniary damage, procedural violations, stress and moral injury" in connection with his being charged and suspended for possible misconduct. Accordingly, the Tribunal dismissed the application in its entirety.

7. Judgment No. UNDT/2011/126 (12 July 2011): Villamoran v. Secretary-General of the United Nations[8] [9]

Suspension of action of administrative decisions—Article 2.2 of the Statute of the United Nations Dispute Tribunal—Urgency—*Prima facie* unlawfulness—Irreparable damage—Break in service—Administrative issuances regulate matters of general application and directly concern the rights and obligations of staff and the Organization—Hierarchy of the Organization's internal legislation—General Requirements for administrative issuances—All rules, policies or procedures intended for general application may only be established through the Secretary-General's bulletins and administrative instructions—Legislation by means other than properly promulgated administrative issuances—

[8] Judge Ebrahim-Carstens (New York).

[9] See too *Villamoran v. Secretary-General of the United* Nation, Judgment No. 2011-UNAT-160 (3 October 2011).

Right to request for an exception to the Staff Rules is a contractual right and it cannot be unilaterally taken away

The Applicant, who held a fixed term appointment with the Department of Field Support (DFS), filed, on 5 July 2011, an application with the Tribunal seeking suspension of action with regard to two administrative decisions: (i) the decision to place her on a temporary appointment after the expiration of her fixed-term contract, which was due to expire on 7 July 2011; and (ii) the decision to require her to take a break in service of 31 days prior to her placement on temporary appointment.

On 7 July 2011, in view of the fact that this was the last working day before the Applicant's separation, the Tribunal issued Order No. 171 (NY/2011) ordering the suspension of the implementation of the contested decision pending the final determination of the present application for suspension of action, until 12 July 2011.

In its Judgment, the Tribunal considered the three requirements for a suspension of action under article 2, paragraph 2, of its Statute, namely: (i) whether the contested administrative decisions appeared *prima facie* to be unlawful; (ii) whether the application was of particular urgency, and (iii) whether the implementation of the decisions would cause the Applicant irreparable damage.

With regard to the particular urgency, the Tribunal recalled its jurisprudence according to which this requirement is not satisfied if the urgency was caused by the applicant. The Tribunal found that, with respect to the part of the application concerning the decision to place the Applicant on temporary appointment, which had been made as early as 25 May 2011, the urgency was self-created and that Applicant therefore failed to satisfy the overall test for a suspension of action with respect to that decision. On the contrary, with respect to the decision to require the Applicant to take a break in service prior to her temporary appointment, which was notified to her only on 23 June 2011, the Tribunal found that the Applicant did satisfy the requirement of urgency.

With regard to the requirement of *prima facie* unlawfulness, the Tribunal recalled that it is enough for an applicant to present a fairly arguable case that the contested decision was influenced by some improper considerations, was procedurally or substantively defective, or was contrary to the Administration's obligations to ensure that its decisions are proper and made in good faith.

The Tribunal noted that at the top of the hierarchy of the Organization's internal legislation is the Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary-General's bulletins, and administrative instructions. Information circulars, office guidelines, manuals, and memoranda are at the very bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances. The Tribunal held that the Respondent had failed to refer to any relevant provision in a General Assembly resolution, staff regulations, staff rules, or other properly promulgated administrative issuances indicating that, in law, there is a requirement for staff members on fixed-term contracts who are being placed on temporary appointments to take a break in service. Accordingly, this requirement could not be introduced, as it was, in a memorandum from the Assistant Secretary-General, Office of Human Resources Management, to all executive officers, particularly considering that it would have the effect of unilaterally varying the terms of employment of affected staff. In this regard, the Tribunal noted that the said memorandum had not been circulated

publicly and was not available to staff members at large. Further, the Tribunal found that there were significant doubts with respect to whether the Assistant Secretary-General, Office of Human Resources Management, has delegated authority to impose such a break in service. The Tribunal found that the memorandum of the Assistant Secretary-General purported, in effect, to amend the existing administrative issuances by adding some new additional requirements concerning breaks in service preceding temporary appointments. It therefore concluded that there is no requirement, in law, to take a break in service prior to the temporary appointment and found that the contested decision appeared *prima facie* to be unlawful.

Turning to the question of irreparable damage, the Tribunal reaffirmed its jurisprudence that mere financial loss is not enough to satisfy the requirement of irreparable damage, and that, if the only way for the Tribunal to ensure that certain rights are truly respected is to grant interim relief, then the requirement of irreparable damage will be satisfied. The Tribunal found that the decision would have significant negative implications on the Applicant, including with regard to medical insurance; visa situation; pension participation, relocation to her home country, obstacles for re-employment on a temporary basis, and personal status. The Tribunal also found that the contemporaneous emotional effect of the implementation of the *prima facie* unlawful decision on the Applicant would be of such a nature as to justify a finding of irreparable damage. The Tribunal therefore concluded that this third requirement for a suspension of action was present.

In its final observations, the Tribunal indicated that there appear to be some significant issues directly affecting staff members' contractual rights that were presently decided in a non-transparent and unilateral matter. The Tribunal considered that if the matters being dealt with in this matter affect material contractual provisions, this practice contradicts not only the provisions of ST/SGB/2009/4, but also the requirements of good faith and fair dealing, and is detrimental to the basic rights of staff members. Decisions of general application that affect contractual rights must therefore be issued through properly promulgated administrative issuances.

The Tribunal also commented on the assertion, made by the Assistant Secretary-General, Office of Human Resources Management, that no exceptions to the decisions introduced by her memoranda may be granted. The Tribunal noted that the right to request and to be properly considered for an exception is a contractual right of every staff member and it cannot be unilaterally taken away, despite the language in those memoranda. It follows that any request for an exception to the Staff Rules must be properly considered, and that failure to do so would result in a violation of the contractual rights of the staff member requesting the exception.

The Tribunal ordered suspension, during the pendency of management evaluation, of the implementation of the decision requiring the Applicant to take a mandatory break in service after the expiration of her fixed-term contract and prior to a temporary appointment.

8. *Judgment No. UNDT/2011/138 (2 August 2011): Bagula v. Secretary-General of the United Nations*[10]

Summary dismissal—Manifest abuse of proceedings by the Applicant—Article 10, paragraph 6, of the Statute of the Dispute Tribunal—Dangers inherent in conducting judicial proceedings via teleconference—Attempts to mislead the Tribunal—Aggravated contempt of court by the Applicant—Costs awarded against the Applicant—Private legal obligations of staff members—Criminal accountability of United Nations Officials and experts on mission.

The Applicant was employed with the United Nations Mission in the Democratic Republic of Congo (MONUC) (as it then was) with a 300-series appointment as a warehouse worker in Bukavu. In 2006, the Special Investigations Unit (SIU) conducted an investigation into allegations that several staff members in the Engineering Section, MONUC, Bukavu, including the Applicant, had forced several Casual Daily Workers to pay money to secure and then retain their jobs in MONUC. SIU also conducted another investigation focusing specifically on the allegations against the Applicant. A disciplinary process ensued, following which, in the light of the Joint Disciplinary Committee's findings, conclusions and recommendations, as well as the entire record and the totality of the circumstances, the Secretary-General decided that the Applicant would be separated from service without notice or compensation in lieu thereof.

On 13 May 2009, the Applicant challenged the Secretary-General's decision before the former United Nations Administrative Tribunal. His application was transferred to the United Nations Dispute Tribunal, on 1 January 2010.

Having observed the demeanour of the witnesses who appeared before the Tribunal, examined and analyzed their evidence in support of the charge against the Applicant, the Tribunal found the evidence credible, truthful and properly acted upon. The testimonies relied upon by the Respondent when imposing the disciplinary sanction against the Applicant were substantiated, corroborated and truthful. The evidence relied upon by the Respondent in this case sufficiently supported the charge against the Applicant of improperly soliciting and receiving monies from local citizens in exchange for their initial recruitment and service as United Nations staff and was not recanted as alleged by the Applicant.

The Tribunal also established that the Applicant had attempted to mislead the Tribunal. It ascertained that, when the Tribunal had received testimony via teleconference, the Applicant had provided contact details of false witnesses, who had informed the Tribunal that they had lied to investigators, and that he had later tried to bring impostors to appear before the Tribunal at a hearing in Kinshasa. The Tribunal found that the Applicant's actions were criminal in the extreme and amounted to a blatant abuse of the Tribunal's process and aggravated contempt of court *in facie curiae*. It further observed that the present case amply illustrated some of the dangers inherent in conducting judicial proceedings via teleconference.

Pursuant to article 10, paragraph 6, of its Statute, the Tribunal found that the Applicant had manifestly abused the proceedings before it, and it recommended that the Administration should withhold all final entitlements, if any, still due to the Applicant. The Tribunal further recommended that all monies due to the individual witnesses for

[10] Judge Nkemdilim Izuako (Nairobi).

any work they undertook for MONUC and for which they were not remunerated should be recoverable from any entitlements that are due to the Applicant; in the event that these entitlements are not sufficient to cover these sums, the witnesses should be advised to pursue their claims in accordance with the laws of the Democratic Republic of the Congo. Alternatively, the Tribunal encouraged the United Nations Organization Stabilization Mission in the Democratic Republic of Congo Administration to exercise its discretion to determine how best to bring closure to the suffering of the witnesses in accordance with the applicable Staff Regulations and Staff Rules. The Tribunal rejected the Application in its entirety and awarded costs against the Applicant in the terms described.

The Tribunal strongly urged United Nations Member 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.

9. *Judgment No. UNDT/2011/162 (16 September 2011): Mushema v. Secretary-General of the United Nations*[11]

Separation from service for misconduct—Role of the Tribunal in the review of disciplnary cases—Facts constituting misconduct—Gross negligence—Foreseeable risk—Proportionate sanction—Due process rights during preliminary investigation and disciplinary process—Time Limit to respond to allegations—Substantive or procedural irregularity in disciplinary proceedings—Opportunity for cross examination of witnesses—Reinstatement of the Applicant—Compensation for loss of earnings—Compensation for procedural irregularities during investigation and disciplinary process

The Applicant, was a Senior Logistics Assistant at the World Food Programme (WFP), and responsible for supervising two warehouses in Dodoma, Tanzania (the main WFP warehouse and the Strategic Grain Reserve (SGR) warehouse). In September 2007, 13.033 metric tons of WFP vegetable oil went missing from the SGR warehouse. After the conduct of two investigations, the Applicant was charged with misconduct for gross negligence in the performance of his duties and responsibilities. Subsequent to the findings and recommendation of an *ad hoc* Disciplinary Committee, the Applicant was separated from service.

On 29 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.

In its Judgment, the Tribunal noted that, in reviewing disciplinary cases, its role is to examine: (i) whether the facts on which the disciplinary measure was based have been established; (ii) whether the established facts legally amount to misconduct; (iii) the proportionality of the disciplinary measure applied to the offence; and (iv) whether there was a substantive or procedural irregularity. Further, the Tribunal noted that, in reviewing dis-

[11] Judge Vinod Boolell (Nairobi).

ciplinary cases, it must scrutinize the facts of the investigation, the nature of the charges, the response of the staff member, oral testimony if available and draw its own conclusions.

After examination, the Tribunal concluded that the majority of the facts upon which the disciplinary measure was based were not established. The Tribunal found, however, that the fact that was established, based on the Applicant's own admissions, related solely to the Applicant not identifying even one of the of the 704 semi-empty/empty oil cartons in the warehouse during their regular physical inventory. The Tribunal's consideration of the allegation that the Applicant was grossly negligent in the performance of his duties and responsibilities was thus limited to the latter fact. After examination of the relevant rules and regulations, the Tribunal concluded that the established facts did not legally amount to misconduct within the meaning of staff rule 110.3. Pursuant to the United Nations Development Programme (UNDP) policies/procedures, gross negligence involves an extreme and reckless failure to act as a reasonable person would with respect to a reasonably foreseeable risk, regardless of whether intent was involved or not in the commission of the act or that the staff member benefits from it. The Tribunal considered the duties and responsibilities required to be performed by the Applicant by his terms of reference and the relevant WPF manuals and found that a reasonable person in the Applicant's position would not have been able to identify the semi-empty/empty cartons in the performance of his routine daily duties. The Tribunal further found no merit in the contention that the Applicant was grossly negligent because he failed to appreciate that the risk of theft was reasonably foreseeable and to adequately assess it.

Based on the circumstances of this case, the Tribunal found that the penalty of separation from service was disproportionate and unwarranted.

With regard to the regularity of the procedure, the Tribunal noted that there are two distinct investigatory procedures set out in ST/AI/371, which are similarly provided for in the applicable UNDP administrative issuance. The first procedure relates to an investigation where no specific allegation of misconduct is reported or individual staff members are identified. The Tribunal observed that—despite that fact that it is never done at this stage—normal due process rights would require that the staff member be warned if there is any incriminating matter that has been raised against or by him/her. The second procedure relates to cases where a staff member is investigated for unsatisfactory conduct. The Tribunal held that before such a disciplinary investigation is embarked on, there must be "reason to believe" that a staff member has engaged in "unsatisfactory conduct". The Tribunal further noted that, in the case of unsatisfactory conduct, if the investigation is flawed in that: (i) the due process rights of the staff member have not been respected; or (ii) it has not been thoroughly conducted, then the whole disciplinary process is tainted.

In relation to the investigations in the present case, the Tribunal held that, in view of the fact that the Applicant had been identified as a possible wrongdoer in the preliminary investigation, his due process rights should have been afforded to him upon the commencement of the preliminary investigation in October 2007. The Tribunal found that the Applicant was not afforded the requisite due process rights until he was given the Allegations of Misconduct on 15 April 2008 and, consequently, it concluded that the Applicant's right to due process was violated.

In relation to the Allegations of Misconduct, the Tribunal rejected the Applicant's claim that the decision to separate him from service was a foregone conclusion given the

language in the Allegations of Misconduct. Although the Tribunal acknowledged that the language used to recommend that Applicant' separation from service was inappropriate, it did not amount to a violation of due process rights. The Applicant further alleged that his due process rights were violated given the time he was afforded to respond to the allegations. The Tribunal held that it is perfectly permissible for the Tribunal, without imposing a strict time limit, to decide on a case by case basis, what would amount to a reasonable time. Such an exercise should consider the nature of the charges, their complexity, volume of documents, if they are annexed to the charges and whether the staff member needs additional materials to enable him/her to prepare the response. However, in concluding that the Applicant was given a reasonable amount of time to respond, the Tribunal held that due process also means that when the Administration files charges against a staff member, it should inform the staff member that if he/she needs more time to file a response, he/she should make a reasoned request to that end. The Tribunal noted that this was not done in the present case.

Lastly, the Applicant alleged that the *ad hoc* Disciplinary Committee failed to follow proper procedure in that it did not clearly communicate to him the evidence it used to reach its conclusions and that he was not given the opportunity to cross examine the witnesses. In relation to the latter contention, the Tribunal rejected the Respondent's submission that the applicable procedures do not require a hearing or the in-person cross examination of witnesses, stating that to accept the submission would amount to a denial of the fundamental rights of employees. In particular, seeing that the evidence given by the Head of Logistics to the Disciplinary Committee went to the core of the alleged misconduct, the Applicant should have been given the opportunity to at least cross examine the witness.

The Tribunal held that the Respondent unfairly dismissed the Applicant and that the charge of gross negligence was not well-founded. Additionally, the Tribunal concluded that that there were procedural irregularities in the conduct of the investigation and the disciplinary proceedings that form a separate basis for awarding compensation to the Applicant. The Tribunal ordered rescission of the decision to separate the Applicant from service and ordered the Respondent to reinstate the Applicant and to make good all of his lost earnings from the date of his separation from service to the date of his reinstatement. In the alternative, the Respondent was to compensate the Applicant for loss of earnings from the date of his separation from service to the date of the Tribunal's judgment. Further, the Respondent was to compensate the Applicant in the amount of six months' net base salary for the procedural irregularities during the investigation and disciplinary process.

10. Judgment No. UNDT/2011/174 (7 October 2011): Baron v. Secretary-General of the United Nations[12]

Request for compensation owing to injury attributable to the performance of official duties—Alleged gross negligence of the Organization in ensuring the security and safety of staff members—Irreceivability of claim relating to gross negligence for lack of a prior request to the Secretary-General—Interpretation of article 17 of appendix D to the Staff Rules—Reconsideration by the Secretary-General of a decision taken on the recommendation of the Advisory Board on Compensation Claims (ABCC)—Request for reconsideration is a prerequisite for

[12] Judge Jean François Cousin (Geneva).

FILING AN APPLICATION WITH THE TRIBUNAL—RECEIVABILITY OF THE CLAIM, GIVEN THE AMBIGUITY OF THE WORDING OF ARTICLE 17 OF APPENDIX A—ORDER FOR MEDICAL EVALUATION

On 19 August 2003, the United Nations headquarters in Baghdad, Iraq, suffered a bomb attack, resulting in the death of 22 persons and injuring many others including the Applicant who was serving with the security staff. In August 2009, the Applicant was separated from service for health reasons, following the United Nations Staff Pension Committee's decision to grant him a disability benefit pursuant to article 33 of the United Nations Joint Staff Pension Fund Regulations for a 67 percent permanent loss of function related to spinal column impairment and post traumatic stress disorder. On 28 January 2011, the Applicant contested the Secretary-General's decision of 29 October 2010 to approve the recommendation of the Advisory Board on Compensation Claim (ABCC), rejecting his request for additional compensation for the permanent loss of ear-nose-throat (ENT) and pulmonary functions before the Tribunal. He further requested the Tribunal to award him two years' net base salary as compensation for the gross negligence of the Organization in failing to ensure the security and safety of its staff in Baghdad.

With regard to the Applicant's claim for compensation related to the gross negligence of the Organization, the Tribunal found that there was nothing in the case file to show that a request in this regard was submitted to the Secretary-General and denied. That denial—and only that denial—could have been challenged before the Tribunal, after being submitted to management evaluation. This claim was therefore rejected as not receivable.

In relation to the Applicant's claim contesting the decision by which the Secretary-General had denied additional compensation for the permanent loss of ENT and pulmonary functions, the Respondent contended that the application was not receivable because the Applicant had not exhausted all internal remedies available to him before filing it. The Tribunal found that, pursuant to article 8, paragraph 1 (c), of its Statute and staff rule 11.2 (b), the Applicant was not required to request a management evaluation. As regards the request to the Secretary-General for reconsideration provided for by article 17(a) of appendix D to the Staff Rules, the Tribunal observes that the intention of the Secretary-General, in enacting such rule, was to make this request a prerequisite for filing an application with the Tribunal, since this procedure enables him to take an informed decision when his decision is contested on medical grounds. However, taking into account the use of words in this provision ("may", as opposed to "must"), the Tribunal considered that, even though the text should be interpreted as requiring the staff member to make such a prior request for reconsideration before filing his application with the Tribunal, the ambiguity of the wording was such that the Tribunal could not in the present case declare the application not receivable. The Tribunal therefore must rule on the merits.

However, since there were no medical certificates that established independently the type and degree of the Applicant's claimed impairments, the Tribunal ordered, pursuant to articles 9, paragraph 1, of its Statute and 19, paragraph 1, of its Rules of Procedure, that a medical evaluation be performed by a medical board, under precise conditions, before the ruling on the merits. Judgment on all other claims of the parties remained to be decided at a later date.

11. Judgment No. UNDT/2011/202 (29 November 2011): Bangoura v. Secretary-General of the United Nations[13]

EXECUTION OF JUDGMENTS OF THE FORMER UNITED NATIONS ADMINISTRATIVE TRIBUNAL—*RES JUDICATA*—JURISDICTION *RATIONE MATERIAE* OF THE FORMER ADMINISTRATIVE TRIBUNAL AND THE DISPUTE TRIBUNAL TO DEAL WITH THE NON-EXECUTION OF A JUDGMENT—JURISDICTION *RATIONE TEMPORIS*—RIGHT TO A REMEDY—HOLDING OF A PRESS BRIEFING AS EXECUTION OF THE JUDGMENT—DAMAGES FOR NON-EXECUTION OF JUDGMENT

The Applicant had filed an application with the former United Nations Administrative Tribunal seeking the execution of part of Judgment No. 1029, by which the Tribunal had decided in his favour, and compensation for the moral injury caused as the result of the non-execution of that Judgment, as well as damages and interest for the delay in the settlement of his claim of defamation.

The Applicant had been employed by the United Nations International Drug Control Programme since 1992, when, on 5 January 1997, The Washington Post published an article referring to him by name and making a number of allegations against him which ultimately proved to be false and unfounded. As a result of the article, the Applicant was placed on administrative leave and his contract was not renewed. The Acting Spokesman for the Secretary-General subsequently made an announcement at a press conference in relation to this matter.

The Applicant successfully brought a claim before the former Joint Appeals Board and later the former United Nations Administrative Tribunal, in relation to decisions to suspend him, not renew his contract, withhold his final payments and defamatory remarks made about him at the press conference in 1997. In the present case, he alleged that the Judgment of the Administrative Tribunal had not been executed in its entirety because the requirement that the Respondent publish the pronouncements of the Judgment at a press briefing was not complied with. In fact, the Respondent had issued a Press Release and annexed the Judgment to it, several months later than the Judgment required the briefing to be held.

In the present Judgment, the Dispute Tribunal found that the issues raised by the Applicant regarding harm to his reputation stemmed from the same cause of action examined by the Administrative Tribunal and, as such, were *res judicata*. The Applicant did not have the right therefore to bring the same complaints again.

Regarding the execution of Judgment No. 1029, the Tribunal first found that, by issuing a press release, the Respondent had failed to comply with the Judgment and as a result the full execution of that Judgment was outstanding.

With respect to the receivability *ratione materiae* of the application, the Dispute Tribunal noted that, contrary to its own Statute, the Statute of the former Administrative Tribunal did not mention the power of the Tribunal to deal with matters related to the non-execution of its own judgments. It further observed that the Administrative Tribunal had concluded, in its case law, that it did not have such power. However, the Dispute Tribunal disagreed with this position, stating that if the Administration refuses to accept the binding nature of a judgment of the Tribunal, the Tribunal must uphold its integrity.

[13] Judge Vinod Boolell (Nairobi).

Consequently, the Tribunal expressed the view that the former Administrative Tribunal did have the inherent power to deal with execution of judgments and that, as this case was transferred to the Dispute Tribunal, the latter also had jurisdiction to deal with the present case.

As regards the receivability *ratione temporis* of the application, the Dispute Tribunal noted that, as the Statute of the former Administrative Tribunal was silent as to execution of judgments, no time limit was prescribed and there was no clear rule as to when an application for execution of a judgment might become time-barred. The Tribunal held that execution, or implementation, of the Judgment ought to have occurred within a reasonable time after it became executable. Notwithstanding the long time that had passed since Judgment No. 1029 became executable, the Tribunal expressed the view that a party benefiting from a judgment in his favour cannot be left without a remedy through absolutely no fault of his own, and particularly not if the law itself was not clear on the issue of jurisdiction. It considered therefore that it was still open to the Tribunal to make an appropriate order for the fair and expeditious disposal of the case pursuant to article 19 of the Rules of Procedure, and bearing in mind article 36.

The Tribunal ordered the Respondent to execute Judgment No. 1029 by holding a press briefing in which his Spokesman would give particulars of both Judgment No. 1029 and the present Judgment, within one month following the date on which the present Judgment became executable. Furthermore, the Tribunal found that the failure to fully execute the Judgment had deprived the Applicant of complete redress for the wrong done to him for a period of nearly ten years, and awarded damages in the sum of USD 10,000.

12. Judgment No. UNDT/2011/205 (30 November 2011): Marshall v. Secretary-General of the United Nations[14]

Investigation by the Organization of Private legal disputes involving staff members—Organization has no business using its administrative procedures to involve itself in a personal dispute when other appropriate legal channels are available to parties to determine their rights and responsibilites—Due process—Conduct of investigations in the United Nations—Rescission of a cautionary note—Compensation—Moral damages

The Applicant had been serving as supervisor in the United Nations Mission in Ethiopia and Eritrea (UNMEE) based in Asmara, for which he had been competitively selected and formally recommended for a Special Post Allowance. In 2001, the Applicant began a consensual co-habitative relationship with another staff member at UNMEE ("the Complainant"). On 9 March 2005, a son was born to the couple. The relationship ended by mutual consent in June 2005. The Complainant subsequently spoke to the Chief Administration Officer (CAO) and the Acting Chief Communications and Information Technology Section (ACCITS) in UNMEE about her issues with the Applicant. The matter was discussed with the Applicant, who explained that the situation was brought about since the Complainant had unilaterally changed their child's name and removed his name as the father in the birth registration records. The ACCITS and CAO convened an informal peers' group and the Complainant expanded her allegations to include on-going verbal and

[14] Judge Nkemdilim Izuako (Nairobi).

physical abuse by the Applicant in their home against her during their co-habitation and after. The Applicant denied the allegations and explained that the Complainant had other motives for making them. At the suggestion of the peers' group, to which the Applicant agreed, the Applicant was temporarily assigned for one month to Addis Ababa.

On 15 August 2005, the Complainant outlined allegations, in a memorandum entitled "Seeking Protection", that she had been the object of verbal and physical assaults by the Applicant. She alleged that such assaults occurred for the most part after the Applicant had consumed excessive amounts of alcohol. On 8 September 2005, the Special Representation of the Secretary General of UNMEE (SRSG/UNMEE) established an *ad hoc* panel to undertake a preliminary investigation into the possible misconduct by the Applicant based on the allegations made by the Complainant. On 25 October 2005, the ACCITS decided, in an internal memorandum, to extend the Applicant's temporary assignment to Addis Ababa as a result of the official complaint. On 14 February 2006, in a meeting with the Applicant, the Senior Administrative Office and the Chief Civilian Personnel Office, the Chief of Administrative Services (CAS) insisted that the Applicant had an alcohol problem and ought to undergo treatment. In response to a question by the Staff Representative, the CAS also stated that the Administration could place the issue of alcohol abuse on the Applicant's official status file. On 8 August 2006, the Applicant was charged with verbally harassing the Complainant, physically assaulting her and acting in a manner unbecoming of his status as a civil servant.

On 19 December 2006, the Applicant was informed that, following a careful review of the investigation file and his response, the case was being closed in accordance with paragraph 9 (a) of administrative instruction ST/AI/371. The Applicant was, however, "cautioned" that he should be mindful to avoid the appearance of a conflict of interest between his professional duties and personal interests. The Applicant requested that the Officer in Charge (OIC) of the Administration take action to rectify the negative effects of this case on his career and to have all disparaging and potentially damaging records removed from his file, including withdrawal of the caution. Following an unfavorable outcome of the process before the Joint Appeals Board, the Applicant filed an appeal against the decision with the former United Nations Administrative Tribunal on 30 March 2009, which was transferred to the Dispute Tribunal on 1 January 2010.

In its Judgment, the Tribunal held that neither the evidence elicited or findings arrived at by the *ad hoc* investigating panel pointed to or suggested that what was alleged to have happened amounted to or constituted workplace harassment. Outside of their domestic partnership, the only other thing that the Complainant and the Applicant had in common was the fact that that they were both staff members of UNMEE. The Tribunal found that this was the singular reason why a domestic dispute found its way into the official sphere where United Nation resources were unduly deployed to both investigations and what appears to have been an unnecessary disciplinary process.

The Tribunal observed that investigative findings should be based on substantiated facts and related analysis, not suppositions or assumptions. The Tribunal found that the evidence before it demonstrated that there was a clear lack of impartiality, fairness and objectivity in the manner in which the investigation was conducted. It was evidenced from the records that the Applicant's explanations were never inquired into and were totally ignored. The Tribunal held that the investigation merely ended up granting credence to

gossip and some senior management officers' pre-conceived conclusions about the Applicant. Furthermore, it was clear to the Tribunal that the investigating panel's findings were largely irrelevant in so far as it was not the business of the Organization to concern itself with the private domestic affairs of individual staff members, especially where such findings had no bearing on the work environment. The Tribunal concluded that the purported investigations by the *ad hoc* panel, and the findings said to have been made, actually amounted to, as a whole, an invasion of privacy against the Applicant constituting an abuse of power and authority by those members of senior management who authorized it and acted upon its report.

The Tribunal held that even if the Administration examines complaints officially made to it, it must first do so with a view to determining whether the said complaint is one that it can lawfully and properly entertain. Allegations of domestic violence and conflicts over child custody, maintenance or paternity are properly matters for a criminal court and family court to entertain. The officials of the Administration had neither the power nor the capacity to wade into such matters. This was clearly beyond their scope and the Administration had acted *ultra vires* by its undue involvement. It had also breached the Applicant's human right to a fair adjudication of a domestic dispute by a properly constituted court when it arrogated to itself powers it did not have in that regard.

The Tribunal found that a range of the senior officials involved in this matter failed to critically evaluate the dispute at the expense of the good name of the United Nations. The Tribunal noted that the work of the Gender Focal Point (GFP) had an overbearing influence in the events leading up to the institution of disciplinary proceedings. The Tribunal also observed the efforts on the part of some senior officials in UNMEE Administration, through veiled threats, to "arm-twist" the Applicant into admitting to an alcohol problem. Additionally, the Tribunal considered that the actions on the part of the senior officials in the unilateral extension of the Applicant's one month temporary assignment showed bias, amounted to abuse of authority and a breach of the Applicant's due process rights. Furthermore, the Tribunal held that there was no basis for managerial action, that is, the cautionary note, and that what it sought to achieve was disciplinary sanction by stealth.

The Tribunal held that the Respondent indirectly facilitated the Complainant's false pretences to the Eritrean local authorities to alter the birth records of the child borne by the Applicant and herself, thereby allowing the Complainant to gain exclusive and sole custody of the said child. The Tribunal expressed the view that, if the case had been appropriately directed to the relevant authorities, the Applicant would not have had to endure a substandard investigation and baseless disciplinary process. These processes, the Tribunal found, caused damage to the Applicant's professional reputation and subjected him to extreme stress, moral damage and lost contact with his baby son. The Applicant has also had to engage in an international legal custody battle for his son.

The Tribunal recommended that all officials of the Organization, especially those in senior management positions, make serious efforts to familiarize themselves with the proper scope of their decision-making powers. They must continually refer to the relevant staff rules, bulletins and other administrative issuances and seek proper legal advice before making decisions that affect the status, contracts and indeed domestic life of staff members who work under them.

The Tribunal found Judgment in favour of the Applicant. The cautionary note, which was termed managerial action, was rescinded and nullified and the Tribunal ordered that all references to it in the Applicant's personnel record be removed. The Applicant further received the difference between the salary he received while in Addis Ababa and the special post allowance earlier granted him. The Applicant was awarded compensation for the substantial and grave mishandling by the Administration of this matter to his detriment in the amount of 24 months' net base salary. He was also awarded nine months' net base salary for the totality of the stress and moral damages suffered.

B. Decisions of the United Nations Appeals Tribunal

The United Nations Appeals Tribunal held its first session in 2011 in New York from 28 February to 11 March. It held its second session in 2011 in Geneva, from 27 June to 8 July, and rendered a total of 130 decisions that year.

1. *Judgment No. 2011-UNAT-109 (11 March 2011): Hastings v. Secretary-General of the United Nations*[15]

Staff rule 112.2 allows exceptions to Section 5.2 of Administrative Instruction ST/AI/2006/3 establishing ineligibility of applicants for positions more than one level higher than personal grade—Compensation for loss of a "chance" for promotion may sometimes be made on a percentage basis—trial court in best position to assess those damages—Except in compelling cases, the duration of damages awarded should be limited—An award for moral damages must be supported by specific evidence

The Respondent (Applicant in the first instance), a P-5 staff member, was granted a Special Post Allowance to the D-1 level in 2008. In 2009, the Respondent requested that an exception to section 5.2 of Administrative Instruction ST/AI/2006/3 be made to enable her, a P-5, to apply for a D-2 post. The Respondent was informed that her request could not be complied with as exceptions were not permitted under section 5.2 of ST/AI/2006/3. After the Respondent requested an administrative review of the decision and was informed that the decision would be upheld, the Respondent appealed to the Joint Appeals Board (JAB). Upon abolition of the JAB, the case was transferred to the United Nations Dispute Tribunal (UNDT).

On 7 October 2009, the UNDT issued Judgment No. UNDT/2009/030 in the case of *Hastings* v. *Secretary-General of the United Nations* (Judgment on Merits) and determined that the wording of section 5.2 was susceptible to exceptions under staff rule 112.2(b) and accordingly, the decision to reject the application on the basis that no exceptions were possible was not lawful. On 28 April 2010, the UNDT issued Judgment No. UNDT/2010/071 in the case of *Hastings* v. *Secretary-General of the United Nations* (Judgment on Remedies) and found that the Respondent had a 10 percent chance of being successful in her application for the D-2 post. The UNDT ordered the Secretary-General to pay the Respondent 10 percent of the difference between the salary and benefits she actually carried and that which she would have received in the D-2 position until retirement. In addition, the UNDT

[15] Judge Mark P. Painter, Presiding, Judge Jean Courtial and Judge Luis María Simón.

awarded the Respondent the sum of USD 5,000 for moral damages. On 14 June 2010, the Secretary-General filed an appeal from both Judgments.

The Appeals Tribunal affirmed that staff rule 112.2(b) allowed an exception to the language of section 5.2 of ST/AI/2006/3. With regard to the damages, the Appeals Tribunal affirmed that compensation for loss of a "chance" for promotion may sometimes be made on a percentage basis and that the trial court was in the best position to assess those damages. The Tribunal found the damages awarded—10 percent of the difference of salary and benefits until retirement—to be excessive. Except in very compelling cases, the Appeals Tribunal found that the duration of damages awarded should be limited and therefore modified the duration of the damages awarded to the Respondent to two years. The Appeals Tribunal also reaffirmed the principle that an award for moral damages must be supported by specific evidence and found that there was no such evidence of damages or injuries in the case to support the award of USD 5,000. The Tribunal therefore vacated the Judgment for moral damages.

2. *Judgment No. 2011-UNAT-120 (11 March 2011): Gabaldon v. Secretary-General of the United Nations*[16]

Withdrawal of offer of Appointment in the absence of a Letter of appointment—Unconditional acceptance of offer of appointment can create legally binding obligations between the Organization and its staff—Interpretation of "Staff Member" within the meaning of Article 3 of the United Nations Dispute Tribunal Statute—Access to the system of administration of justice by non-staff members limited to persons legitimately entitled to similar rights to those of staff members

The Appellant received an offer of appointment, subject to medical clearance, from the Chief Civilian Personnel Office of the United Nations Mission in the Sudan (UNMIS). Following the issuance of medical clearance by the UNMIS Medical Unit, the Appellant fell ill and was hospitalized. Subsequently, the UNMIS Medical Unit reversed its earlier clearance and assessed the Applicant as being "not fit" for employment. The Applicant was informed that the offer of employment had been withdrawn on the grounds that he had not been declared physically fit. The Appellant sought to contest the decision to withdraw his offer of employment under the former United Nations system of administration of justice. Upon the abolition of that Tribunal, the case was referred to the UNDT. The UNDT rejected the application on the grounds that it lacked jurisdiction *ratione personae* to adjudicate the claim. The UNDT Tribunal noted that the Appellant had never received a letter of appointment signed by a duly authorized official of the Organization and therefore had not become a staff member of the United Nations within the meaning of article 3(1) of the UNDT Statute. The Appellant lodged an appeal on 26 July 2010.

The Appeals Tribunal recalled that an employment contract of a staff member, which subject to internal laws of the Organization, was not the same as a contract between private parties, and that the issuance of a letter of appointment by the Administration could not be regarded as a mere formality. Nonetheless, the Tribunal found that an offer of appointment, though it did not constitute a valid employment contract, could produce legal effects, if all the conditions set forth in the offer of employment were unconditionally accepted and

[16] Judge Jean Courtial, Presiding, Judge Mark P. Painter and Judge Inés Weinberg de Roca.

fulfilled by the offeree in good faith. In such a situation the offeree should be regarded as a staff member for the limited purpose of seeking recourse within the internal justice system.

The Appeals Tribunal held that access to the new system of administration of justice for persons who formally were not staff members should be limited to persons who were legitimately entitled to similar rights to those of staff members. It followed that the UNDT had committed an error of law in denying the Appellant access solely on the grounds that the Appellant never received a letter of appointment, without seeking to ascertain whether the Appellant had satisfied all the conditions of the offer of employment and was entitled to contract-based rights. The Appeals Tribunal overturned the UNDT's judgment and remanded the case to the UNDT for examination of the facts of the case in light of its holding.

3. *Judgment No. 2011-UNAT-121(11 March 2011): Bertucci v. Secretary-General of the United Nations*[17]

Right to order the production of documents for the purposes of fair and expeditious disposal of proceedings—Right to request the verification of the confidentiality of documents—Specific or justified reasons needed to oppose an order for the production of documents—Statute of the United Nations Dispute Tribunal does not permit exclusion of a party from proceedings where the party does not comply with an order of the Tribunal—Violation of the Right to a Defence and Right to an Effective Remedy under the Universal Declaration of Human Rights

The Appellant contested the decision not to select him for the post of Assistant Secretary-General (ASG) of the Department of Economic and Social Affairs (DESA). The Appellant's recourse to the Joint Appeals Board (JAB) was transferred to the UNDT when the new system of internal justice became effective on 1 July 2009. The UNDT handed down two judgments on merits (Judgment No. UNDT/2010/080 of 3 May 2010 and Judgment No. UNDT/2010/117 of 30 June 2010, in the case of *Bertucci* v. *Secretary-General of the United Nations*) that ruled in favour of the Appellant. Judgment No. UNDT/2010/080 was a default judgment handed down against the Secretary-General by way of sanctioning the Administration for the refusal to produce pertinent evidence requested of it. The Secretary-General appealed both judgments.

The Appeals Tribunal recalled that the UNDT had, under its Statute and Rules of Procedure, the right to order the production of any document necessary for the fair and expeditious disposal of its proceedings. In the case at hand, the Appeals Tribunal pointed out that the Appellant had raised sufficiently serious questions before the UNDT, regarding the propriety of the process leading to the decision not to select him, and held that the UNDT judge had had sufficient grounds to order the production of the documents withheld by the Administration concerning the selection process that led to the impugned administrative decision.

The Appeals Tribunal further noted that, if the Administration opposed an order by the UNDT to produce a certain document in its possession, it could, with sufficiently specific and justified reasons, request the UNDT to verify the confidentiality of the docu-

[17] Judge Jean Courtial, Presiding, Judge Sophia Adinyira, Judge Kamaljit Singh Garewal, Judge Mark P. Painter, Judge Inés Weinberg de Roca and Judge Luis María Simón.

ment in question. Before such verification was completed, the said document could not be transmitted to the other party. If the UNDT considered the confidentiality of the document justified, it had to remove the document, or part of it, from the case file. The UNDT could not subsequently use such a document against a party unless the said party had an opportunity to examine it. Exceptions to the principle of confidentiality had to be interpreted strictly. In the case at hand, the Appeals Tribunal held that the objections proffered by the Secretary-General in declining to comply with the UNDT's order to produce were neither specific nor justified.

Nonetheless, the Appeals Tribunal held that the UNDT could not exclude a party from its proceedings if that party refused to execute the UNDT's order to produce a document, because to do so would run afoul of the principle of respect for the right to a defence and the right to an effective remedy before a judge, recognized in article 8 of the Universal Declaration of Human Rights. When a party refused to execute the UNDT's order to produce a document, the UNDT was entitled to draw appropriate conclusions from the refusal in its final judgment. The UNDT could have regarded the Administration's refusal as acceptance of the allegations made by the other party concerning the facts.

The Appeals Tribunal held that the UNDT had not been entitled to sanction the Secretary-General by preventing his counsel from taking part in the proceedings, and to deliver a default judgment. In delivering such a judgment, the UNDT had violated the right of the Secretary-General to be heard and had exceeded its competence. The Appeals Chamber set aside the two Judgments and remanded the adjudication of the case to the President of the UNDT for assignment to a Judge.

4. Judgment No. 2011-UNAT-130 (8 July 2011): Koda v. Secretary-General of the United Nations[18]

Constructive termination requires a reasonable person to believe that the employer was "marching [him or her] to the door"—Decisions of the Office of internal oversight may fall within the jurisdiction of the United Nations Dispute Tribunal if used to affect an employee's terms or contract of employment—Trial Court record a necessity for a review of factual findings by the United Nations Appeals Tribunal

The Appellant was appointed Director at the United Nations Information Centre in Tokyo (UNIC Tokyo) and subsequently underwent an investigation for allegations made against her conduct as Director. A report, issued by a panel constituted by the Department of Public Information (DPI) under Chapter X of the Staff Rules and the Administrative Instruction on Revised Disciplinary Measures and Procedures (ST/AI/371), was critical of the Appellant but did not find any misconduct. A subsequent report, issued by the Office of Internal Oversight Services (OIOS) as part of an audit, took note of the DPI Panel's report and recommended that the Appellant be re-assigned. The recommendation was rejected, and the Appellant's appointment was extended in May 2008. The Appellant subsequently resigned from her position in June 2008.

In October 2008, the Appellant filed an appeal with the JAB. The JAB did not review the Appellant's case before its abolition on 30 June 2009, and the case was transferred to

[18] Judge Mark P. Painter, Presiding, Judge Sophia Adinyira and Judge Inés Weinberg de Roca.

the UNDT. The UNDT dismissed the Appellant's application, finding that she was not constructively dismissed and declining to quash the DPI Panel's Report. The UNDT also found that OIOS' decision as to the content of its audit report was not within the Tribunal's jurisdiction. On 8 August 2010, the Appellant submitted her appeal, claiming that she was constructively dismissed and requested that the DPI Panel Report be quashed.

The Appeals Tribunal held that, in a case of alleged constructive termination, the actions of the employer must be such that a reasonable person would believe that the employer was "marching [him or her] to the door". The Appeals Tribunal held that the UNDT had applied the proper standard and found no constructive termination. Instead, the Administration had continued to extend the Appellant's contract, even in the face of negative reports.

The Appeals Tribunal expressed doubts that the DPI Panel Report could be considered to be an "administrative decision" subject to the Tribunal's jurisdiction. However, even assuming that the Report was subject to judicial review, the Appeals Tribunal deferred to the findings of the UNDT.

In relation to the OIOS report, the Appeals Tribunal recalled that OIOS operated under the "authority" of the Secretary-General, but enjoyed "operational independence". The Tribunal found that, since the Secretary-General had no power to influence or interfere with OIOS with regard to the contents and procedures of an individual report, neither the UNDT or the Appeals Tribunal had the jurisdiction to do so either, as they could only review the Secretary-General's administrative decisions. Nonetheless, the Appeals Tribunal held that since OIOS was part of the Secretariat, it was subject to the Internal Justice System. To the extent that any OIOS decisions were used to affect an employee's terms or contract of employment, the OIOS report could be impugned. For example, an OIOS report could be found to be so flawed that the Administration's taking disciplinary action based thereon had to be set aside. In the case at hand, although the UNDT had found the OIOS report to be flawed, the Appeals Tribunal found no error in the UNDT's holding that the OIOS report could not be impugned for the reason that the Administration had not based any disciplinary action on it.

The Appeals Tribunal noted that, in the case at hand, neither party contested the trial court's factual findings. Nonetheless, it noted that the appellate review of facts required a record. The Tribunal cautioned that in a case that turned on disputed facts, it would have no choice, in the absence of a written transcript, but to remand the matter to the trial court for a new, and recorded, hearing. The cost in time, money, and duplicated effort associated with a remand outweighed the cost of providing a transcript. It stated, further, that if the budget did not exist it had to be created, or the Organization's system of internal justice would fail.

5. *Judgment No. 2011-UNAT-131(8 July 2011): Cohen v. Secretary-General of the United Nations*[19]

Summary Dismissal—Article 10(5) of the Statute of the United Nations Dispute Tribunal—Compensation exceeding two years' net base salary ordered in lieu of specific performance of obligation to reinstate should be reasoned—Evidence

[19] Judge Jean Courtial, Presiding, Judge Luis María Simón and Judge Inés Weinberg de Roca.

OF AGGRAVATING FACTORS MAY WARRANT INCREASED COMPENSATION—INTEREST TO BE AWARDED AT THE U.S. PRIME RATE APPLICABLE ON DUE DATE OF THE ENTITLEMENT

The Respondent (Applicant in the first instance), a procurement assistant for the United Nations Mission in the Democratic Republic of the Congo (MONUC), had been formally charged and summarily dismissed for serious misconduct following an investigation by the Office of Internal Oversight Services (OIOS). The Respondent contested the decision to summarily dismiss her before the New York Joint Disciplinary Committee. The Committee found the summary dismissal had not been warranted by the evidence of the investigation and recommended that the Secretary-General suspend the decision to dismiss the Respondent. The Secretary-General declined to follow the Committee's recommendation and the Respondent filed an application with the UNDT. The UNDT subsequently found that the investigation had been unfair and prejudiced against the Respondent and that there had been no evidence on the record to show that the Respondent had solicited or received bribes.

The Administration brought an appeal against the UNDT's order that the Respondent be reinstated or, if the Administration so chose, in lieu of her reinstatement, payment of: (1) compensation equivalent to two years' net base salary, at the rate in effect on the date of her dismissal, with interest payable at a rate of eight percent per year as from 90 days from the date of issuance of the judgment until payment was effected; (2) her salaries and entitlements from the date of her dismissal to the date of judgment, with interest at a rate of eight percent; and (3) two months' net base salary as compensation for the breach of her right to due process.

The Appeals Tribunal recalled that article 10(5) of the UNDT Statute limited the total compensation awarded to an amount which would normally not exceed two years' net base salary of the applicant, unless the Tribunal ordered the payment of higher compensation and gave reasons for that decision. The Appeals Tribunal held that the rescission of an illegal decision to dismiss a staff member implied, for the Administration, both the reinstatement of the staff member and the payment of compensation for loss of salaries and entitlements not related to actual service performance, after deducting any salaries and entitlements that the staff member received during the period considered. In its view, the option given to the Administration, on the basis of article 10(5)(a) of the Statute of the Dispute Tribunal, to pay compensation in lieu of performance of a specific obligation such as reinstatement, combined with the cap fixed in article 10(5)(b), could not render ineffective the right to fair and equitable damages, which was an element of the right to an effective remedy. If, in lieu of execution of the judgment, the Administration elected to pay compensation, in addition to the damages awarded by the UNDT, such election could, depending on the extent of the damage, render the circumstances of the case exceptional within the meaning of article 10(5)(b). In such a situation, the UNDT was not bound to give specific reasons to explain what made the circumstances of the case exceptional.

The Appeals Tribunal found that the UNDT's findings of fact not only warranted rescission of the decision to summarily dismiss the Respondent, but also constituted aggravating factors in a case of irregular, prejudicial dismissal without corroborating evidence. Nonetheless, the Appeals Tribunal also found the compensation awarded by the UNDT to the Respondent, representing more than four years and eight months' net base salary, to be excessive.

Accordingly, the Appeals Tribunal upheld the Judgment of the UNDT, subject to the following amendments: (i) the compensation awarded by the UNDT for loss of earnings corresponding to the dismissal period was reduced to an amount equivalent to two years' net base salary plus entitlements not related to actual service performance, based on the situation as at the date of dismissal; (ii) the interest rate fixed in the UNDT's judgment was replaced by the U.S prime rate applicable on the due date of the entitlement.

6. Judgment No. 2011-UNAT-139 (8 July 2011): Basenko v. Secretary-General of the United Nations[20]

Competence of the United Nations Dispute Tribunal—Articles 2.1 and 3.1 of the United Nations Dispute Tribunal Statute—Interns not considered staff members of the United Nations—Interns do not have access to the United Nations Dispute Tribunal

The Appellant was undertaking a six month unpaid internship with the United Nations Office on Drugs and Crime (UNODC), which was interrupted by mutual consent owing to a conflict between the intern and her supervisor. On 14 May 2009, the Division of Management of the United Nations Office at Vienna (UNOV) made an offer to the Appellant, which she immediately accepted, to complete her internship with the International Trade Law Division from 1 October to 27 November 2009. This offer was subsequently withdrawn on 9 September 2009 on the grounds that the Appellant had made unauthorized use of her grounds pass after the interruption of her internship.

The Appellant submitted a request for management evaluation and the decision to withdraw the internship offer was upheld. On 27 May 2010, the Appellant filed an appeal against the decision with the UNDT and the application was rejected. The UNDT noted that the Appellant was neither a current nor a former staff member of the United Nations and that the UNDT was not competent to hear her application. The Appellant filed an appeal against the Judgment.

In rejecting the appeal, the Appeals Tribunal confirmed the UNDT's judgment, and held that, pursuant to articles 2.1 and 3.1 of its Statute, the competence of the UNDT was limited to cases brought by staff members, former staff members or persons making claims in the name of incapacitated or deceased staff members of the United Nations. The Appeals Tribunal recalled that, while access to the new system of administration of justice could be extended to persons who were not formally staff members but who could legitimately be entitled to rights similar to those of a staff member, such exception had to be understood in a restrictive sense. It held that, in accordance with paragraph 7 of General Assembly resolution 63/253 on the administration of justice at the United Nations, interns had no access to the new system of administration of justice. The Appeals Chamber also found that there was no evidence that any fundamental rights of the Appellant had been breached.

[20] Judge Jean Courtial, Presiding, Judge Mark P. Painter and Judge Mary Faherty.

7. Judgment No. 2011-UNAT-145 (8 July 2011): Eid v. Secretary-General of the United Nations[21]

Application for revision of judgment under article 29 of the United Nations Dispute Tribunal Rules of Procedure—Definition of 'fact' for revision of judgments—Issuance of new jurisprudence is an issue of 'law', not 'fact'

The Respondent (Applicant in the first instance) was informed that his post would be abolished effective 31 December 2002, with the availability of a compensation package that was conditional upon him giving a written undertaking not to enter into any proceedings against the Organization in connection with his termination. However the Respondent was not separated from service until 14 February 2003, after he was placed on sick leave from 9 December 2002. The Respondent's request for additional sick leave days was not approved and he continued to contest this decision as well as request that the compensation package be paid to him without delay. The case went through the administrative review and the Joint Appeals Board and was declared time-barred. The Respondent continued his appeal to the former Administrative Tribunal, which did not have an opportunity to review the case before its abolition on 31 December 2009. The case was subsequently transferred to the UNDT.

The UNDT rejected the part of the application that contested UNIFIL's refusal to grant the Respondent an extension of his contract on the ground of ill-health but considered the application to review the delay or refusal to pay the compensation package receivable. The UNDT ordered the Secretary-General to pay the normal termination indemnity and other sums owed to the Respondent in connection with his separation from service, with eight percent interest from 14 February 2003, when they fell due, until the payment was made.

On 1 July 2010, the Appeals Tribunal issued a synopsis of Judgment No. UNAT/2010/059 in the case of *Warren* v. *Secretary-General of the United Nations,* which fixed the interest rate applicable to pre-judgment compensation at the US prime rate applicable at the time the entitlement fell due. On 11 August 2010, the Secretary-General submitted an application for revision to the UNDT under article 29 of the UNDT Rules of Procedure. The Secretary-General considered the decision to fix the interest rate at the US prime rate to be a "decisive fact" and maintained that the UNDT's award of eight percent interest rate on the pre-judgment compensation in this case was contrary to the findings of the Appeals Tribunal. By Order No. 70 (GVA/2010) in the case of *Eid* v. *Secretary-General of the United Nations* dated 18 August 2010, the UNDT rejected the application for revision. On 4 October 2010, the Secretary-General filed an appeal from both the Judgment and Order.

The Appeals Tribunal held that a change in law was not a "fact" contemplated by the provision for revision of judgments in the UNDT Statute. The issuance of new jurisprudence by the Appeals Tribunal was an issue of law, not of fact. Thus, there were no grounds for revision, and the UNDT Order was affirmed. Furthermore, the appeal from Judgment No. UNDT/2010/106 in this case was considered not receivable as it was time barred.

[21] Judge Mark P. Painter, Presiding, Judge Inés Weinberg de Roca and Judge Jean Courtial.

8. *Judgment No. 2011-UNAT-160 (3 October 2011): Villamoran v. Secretary-General of the United Nations*[22] [23]

ARTICLE 13 OF THE UNITED NATIONS DISPUTE TRIBUNAL RULES OF PROCEDURE—INTERLOCUTORY APPEAL MADE DURING THE COURSE OF UNITED NATIONS DISPUTE TRIBUNAL PROCEEDINGS RECEIVABLE ONLY IN CASES WHERE THE TRIBUNAL HAD CLEARLY EXCEEDED JURISDICTION OR COMPETENCE—ORDER RENDERED BY THE UNITED NATIONS DISPUTE TRIBUNAL REQUIRES EXECUTION IN CASES WHERE ORDER IS BEING APPEALED

The Respondent (Applicant in the first instance), was on a fixed term appointment with the Department of Field Support (DFS). On 21 June 2011, the Respondent was informed that her fixed-term appointment would expire on 7 July 2011, that no further extensions could be granted beyond that date and that she could be considered for a temporary appointment after a minimum 31 day break in service. The Respondent filed a request for management evaluation on 23 June 2011. On 5 July 2011, the Respondent filed an application with the UNDT requesting suspension of two administrative decisions: (i) the decision to place her on a temporary appointment after the expiration of her fixed-term contract on 7 July 2011; and (ii) the decision to require her to take a break in service of 31 days prior to her placement on a temporary appointment.

The UNDT issued Order No. 171 (NY/2011) in the case of *Villamoran* v. *Secretary-General of the United Nations* on 7 July 2011, in view of the fact that it was the last working day before the Respondent's separation. Pursuant to Article 13 of the UNDT Rules of Procedure, the Tribunal noted that it had five days from the service of the application to consider an application for interim measures and thus ordered the suspension of the implementation of the contested decisions until 12 July 2011. On 12 July 2011, the UNDT dismissed the request for suspension of the decision to place the Respondent on a temporary appointment upon the expiry of her fixed-term appointment on 7 July 2011. It also granted the request for a suspension of the decision requiring the Respondent to take a 31 day break in service prior to her placement on the temporary appointment, pending management evaluation. The Secretary-General appealed Order No. 171 (NY/2011).

The Appeals Tribunal indicated that the Statute of the Appeals Tribunal did not clarify whether the Appeals Tribunal could hear an appeal only from a final judgment of the UNDT on the merits, or whether an interlocutory decision made during the course of the UNDT proceedings could also be considered a judgment subject to appeal. Nonetheless, the Appeals Tribunal recalled that it has constantly emphasized that appeals against most interlocutory decisions would not be receivable, except in cases where the UNDT had clearly exceeded its jurisdiction or competence.

The Appeals Tribunal held that, where the implementation of an administrative decision was imminent, through no fault or delay on the part of the staff member, and took place before the five days provided for under article 13 of the Rules of Procedure of the UNDT had elapsed, and where the UNDT was not in a position to take a decision under article 2(2) of the UNDT Statute, i.e. because it required further information or time to

[22] Judge Inés Weinberg de Roca, Presiding, Judge Kamaljit Singh Garewal and Judge Luis María Simón.

[23] See too *Villamoran v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/126 (12 July 2011).

reflect on the matter, it had to have the discretion to grant a suspension of action for the five days. To have found otherwise would have rendered article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules of Procedure meaningless in cases where the implementation of the contested administrative decision was imminent.

The Appeals Chamber therefore found that the UNDT's decision to order a preliminary suspension of five days pending its consideration of the suspension request under Article 13 of the UNDT Rules of Procedure was properly based on articles 19 and 36 of the UNDT Rules of Procedure. It held that the UNDT did not exceed its jurisdiction in rendering the impugned Order and therefore, the interlocutory appeal was not receivable.

The Appeals Tribunal also confirmed that an order rendered by the UNDT required execution in cases where the order was being appealed. The Appeals Tribunal found that article 8(6) of its Rules of Procedure which provided that "[t]he filing of an appeal shall suspend the execution of the judgment contested" did not apply to appeals of interlocutory orders rendered by the UNDT. It was for the Appeals Tribunal to decide whether the UNDT exceeded its jurisdiction and the Administration could not refrain from executing an order by filing an appeal against it on the basis that the UNDT had exceeded its jurisdiction.

9. Judgment No. 2011-UNAT-164 (21 October 2011): Molari v. Secretary-General of the United Nations[24]

Standard of proof required for disciplinary measures—The standard of proof of beyond a reasonable doubt, as applied by the Administrative Tribunal of the International Labour Organization, not applied by the United Nations—Misconduct involving the possibility of termination must be established by clear and convincing evidence, requiring more than a preponderance of the evidence but less than proof beyond a reasonable doubt

The Appellant, a Senior Procurement Specialist at the United Nations Office for Project Support (UNOPS), was charged with professional misconduct and separated from service with one month's notice and payment of termination indemnity. On 15 October 2009, the Appellant filed an application with the UNDT challenging the decision to terminate her service. On 7 April 2010, the UNDT concluded that the Appellant's behaviour amounted to professional misconduct and that the penalty of termination was not disproportionate to the gravity of the offence. On 1 November 2010, the Appellant appealed the UNDT Judgment.

The Appeals Tribunal recalled that when a disciplinary sanction is imposed by the Administration, the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence. It further declined to follow the Administrative Tribunal of the International Labour Organization in holding that the standard of proof in disciplinary cases was beyond a reasonable doubt, and which had never been the standard at the United Nations. Instead, it recalled that it had not as yet set an exact standard for the quantum of proof required. The Tribunal noted further that while disciplinary cases were not criminal in nature, when termination was a possible

[24] Judge Mark P. Painter, Presiding, Judge Sophia Adinyira and Judge Luis María Simón.

outcome, misconduct had to be established by clear and convincing evidence. Clear and convincing proof meant more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it meant that the truth of the facts asserted was highly probable. It further indicated that granting an opportunity to a party to present evidence did not amount to shifting the burden of proof.

The Appeals Tribunal held that the facts in the case were so clear as to be irrefutable and that no matter what the standard, the Administration had met the burden. The UNDT Judgment was affirmed.

10. Judgment No. 2011-UNAT-165 (21 October 2011): Cherif v. International Civil Aviation Organization[25]

Mandate of the United Nations Appeals Tribunal limited to situations where staff members contest the application of an administrative decision—Regulatory decisions not within the jurisdiction of the United Nations Appeals Tribunal—Article 58 of the International Civil Aviation Organization (ICAO) Convention permits restrictions on hiring authority of the Secretary-General

The Appellant, the Secretary General of the International Civil Aviation Organization (ICAO) from 1 August 2003 to 1 August 2009, filed an appeal with the former Administrative Tribunal against two decisions taken by the ICAO Council. The decisions established the requirement, subject to certain exceptions, of written approval of the President of the Council for any hiring, appointment, promotion, extension and termination of P-4 employees and above. The Appellant contended that the decisions severely circumscribed his ability, as Chief Executive Office of ICAO, to make appointments to the Secretariat and his ability to exercise judgment with regard to such appointments.

The Appeals Tribunal recalled that its mandate, and that of the former Administrative Tribunal, was limited to situations where a staff member was contesting the application of an administrative decision, usually taken on behalf of the Secretary-General. Accordingly, it noted that since the Appellant was the Secretary General of ICAO when he filed the case, he was, in essence, suing himself. The Tribunal held further that the Appellant was challenging two regulatory decisions which, as such, were not subject to review by the Tribunal.

The Appeals Tribunal also found that the Council's decisions to restrict the Secretary-General's hiring authority were within its powers, under article 58 of ICAO's Convention, since they pertained to the terms of the relationship between the governing body of ICAO and its Secretary-General.

The appeal was dismissed for want of subject-matter jurisdiction.

[25] Judge Mark P. Painter, Presiding, Judge Kamaljit Singh Garewal and Judge Jean Courtial.

11. Judgment No. 2011-UNAT-172 (21 October 2011): Vangelova v. Secretary-General of the United Nations[26]

STANDARD OF REVIEW FOR NON-PROMOTION DECISIONS—LINK BETWEEN IRREGULARITY OF PROMOTION PROCEDURE AND NON-PROMOTION—ENTITLEMENT TO RESCISSION OR COMPENSATION FOR PROCEDURAL IRREGULARITY REQUIRES A FORSEEABLE CHANCE FOR PROMOTION

The Respondent (Applicant in the first instance) was a staff member of the United Nations High Commissioner for Refugees (UNHCR) since 1992. The Respondent was not among the persons promoted during the 2008 UNHCR annual promotion session. On 25 September 2009, the Respondent filed a request for management evaluation of the decision not to promote her. By a memorandum dated 4 December 2009, the Deputy High Commissioner (DHC) informed the Respondent that the decision had been taken in conformity with the regulations and rules of the Organization. On 4 March 2010, the Respondent appealed the decision to the UNDT.

While the UNDT did not sustain several of the Respondent's contentions, it found merit in the claim that UNHCR had promoted a staff member who was not eligible and whose candidacy had not been examined by the Appointments, Postings and Promotions Board (APPB). In view of such procedural irregularity, the UNDT ordered the rescission of the contested decision not to promote the Respondent, or in lieu thereof, the payment of 8,000 Swiss Francs as compensation for loss of salary due to the denial of the promotion. The UNDT also found that, since the Respondent's chances for promotion at the 2008 session were "close to zero" as 192 candidates (for 42 slots) had scored higher than the Respondent, no grounds existed for granting compensation for moral damages. On 29 November 2010, the Secretary-General filed an appeal.

The Appeals Tribunal held that an irregularity in promotion procedures would only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion. Thus, where the irregularity had no impact on the status of a staff member, because he or she had no foreseeable chance for promotion, then the staff member was not entitled to rescission or compensation.

In the case at hand, the Appeals Tribunal accepted the UNDT's finding that the Respondent's chances of promotion were close to zero, and held that there was consequently no link between the procedural irregularity and the Respondent's non-promotion.

The appeal was granted and the UNDT's decision to rescind and award of compensation were reversed.

[26] Judge Inés Weinberg de Roca, Presiding, Judge Mark P. Painter and Judge Jean Courtial.

C. Decisions of the Administrative Tribunal of the International Labour Organization[27]

1. *Judgment No. 3003 (6 July 2011): A. T. S. G. v. International Fund for Agricultural Development (IFAD)*[28]

ARTICLE XII OF THE STATUTE OF THE TRIBUNAL—RIGHT TO REQUEST ADVISORY OPINION FROM THE INTERNATIONAL COURT OF JUSTICE—TRIBUNAL MAY DEFER THE EXECUTION OF A JUDGMENT IF IT CONSIDERS SUCH A MEASURE JUSTIFIED—RIGHT OF THE STAFF MEMBER TO BENEFIT FROM IMMEDIATE APPLICATION OF A JUDGMENT—BALANCE BETWEEN THE RIGHTS OF THE ORGANIZATION AND THOSE OF THEIR STAFF MEMBERS—APPLICATION FOR A STAY OF EXECUTION OF A JUDGMENT IN LIGHT OF REQUEST FOR ADVISORY OPINION INADMISSIBLE

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[27] 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.

[28] Ms. Mary G. Gaudron, President, Mr. Seydou Ba, Vice-President, Mr. Giuseppe Barbagallo, Ms. Dolores M. Hansen and Mr. Patrick Frydman, Judges.

In response to Judgment No. 2867 in the case of *A.T.S.G.* v. *International Fund for Agricultural Development (IFAD)*, in which the Tribunal recognized its jurisdiction, set aside the challenged decision and ordered IFAD to pay material damages and interest, as well as moral damages and costs, IFAD decided to challenge the validity of that judgment before the International Court of Justice by way of a request for an advisory opinion under article XII of the Statute of the Tribunal.[29] IFAD submitted to the Tribunal a request for a "stay of execution" of Judgment No. 2867, pending the advisory opinion of the International Court of Justice.

According to article VI of the Statute of the Tribunal, the Tribunal's judgments were "final and without appeal". They therefore had an immediately operative character stemming from the Tribunal's earlier rulings,[30] as well as the authority of *res judicata* that they possessed. Neither the Statute nor the Rules of the Tribunal contained any provision by which the submission of a request for an advisory opinion under article XII would result, contrary to this principle, in a stay of execution of the contested judgment pending the Court's opinion.

Three sets of considerations led the Tribunal to exclude the possibility of such an application to stay the execution of a judgment.

First, the immediately operative character of the Tribunal's judgments was one of the cornerstones of its case law and for staff; it represented a fundamental guarantee of the effectiveness of the justice dispensed by the Tribunal. The application for suspension of execution was fundamentally distinct from the other kinds of application which it had found to be admissible, in the absence of express provisions. Furthermore, the Tribunal could at any time decide, as it had done in the past,[31] to defer the execution of a judgment if it considered such a measure justified. It was therefore for the organization concerned, if it sought to have the execution of a judgment deferred in the event that it proved unfavourable to itself, to submit a subsidiary claim for that purpose.

Second, recognition of the admissibility of a request for a stay of execution by the Tribunal would give rise to a legal anomaly. In a national legal system, it was normally the court handling the appeal against the judgment in question which was competent to decide on a request for a stay of execution of the judgment, not the court which had rendered the judgment. That was, moreover, also the case in the new system of administration of justice in the United Nations, introduced on 1 July 2009. The possibility of seeking a stay of execution of a judgment, which could readily be provided for in a two-tier court system, would

[29] According to IFAD, the Tribunal had ruled on matters which did not fall within its jurisdiction or which were vitiated by a fundamental fault in the procedure followed.

[30] See *In re Lindsey* Judgment No. 82 (10 April 1965).

[31] *Ibid*.

raise considerable difficulties if it were allowed by the Tribunal, which did not form part of such a system.[32]

Third, recognition of the possibility of such a request would strengthen a procedure which was already fundamentally imbalanced to the detriment of staff members (article XII of the Statute of the Tribunal, under which the option of recourse to the Court was confined to organizations), an inequality to which the Court had, moreover, drawn attention in its 1956 advisory opinion.[33] The Tribunal concluded that while it was not for it to criticize the provisions of its own Statute, it must not amplify the consequences of the objective inequality arising from article XII of its Statute. Recognition of the possibility of such a request for a stay of execution would upset the balance between the rights of the organizations and those of their staff members which it was the Tribunal's role to preserve.

Having regard to all these considerations, the Tribunal considered that it was not possible to recognize the admissibility of an application from an organization for a stay of execution of a judgment in respect of which the procedure set forth in article XII of its Statute had been initiated. It therefore dismissed the application by IFAD.

2. *Judgment No. 3046 (6 July 2011): M. V. (No. 8) v. World Meteorological Organization (WMO)*[34]

Absolute privilege of statements made in the course of legal proceedings—Inconsistent with fundamental legal principles and incompatible wth the role of the Tribunal to import a term which impinged on the right of an international organization to choose the manner in which it defended proceedings brought against it—Competence of the Tribunal under Article II of its Statute

The complainant requested the Tribunal to compel the World Meteorological Organization (WMO) to take various measures on the grounds that the written communications submitted by WMO to the Tribunal, in the context of an earlier complaint (Judgment No. 2861), were offensive, defamatory, illegal and/or false and had caused irreparable harm. The WMO contended that the complaint was irreceivable by virtue of the principle of *res judicata*.

The Tribunal held that the question was not one of *res judicata*, but rather that of "absolute privilege", which attached to statements made in, and in the course of, legal proceedings, including statements by the parties, their legal representatives and their wit-

[32] The Tribunal observed that recognition of such a possibility would face two key problems: (1) The question of the admissibility of a request for a stay of execution was generally subject to review in order to verify the seriousness of the arguments raised in support of the request. But whereas their seriousness was normally probed by the higher-tier court, the Tribunal could not rule on the correctness or soundness of its own judgments. It followed that the seriousness of a request for suspension could not be verified. Furthermore, if the possibility for organizations to seek such a stay of execution were recognized, they would be encouraged to have recourse to the Court, especially where a large amount of compensation had been awarded, and the risk of the procedure being abused could not be excluded. (2) The other key problem was that if the Tribunal recognized such a request as admissible, it could be confronted at the same time with an application for execution. While that would raise no problem in a two-tier court system, the Tribunal would be faced with a delicate balancing act.

[33] See *In re Lindsey* Judgment No. 82 (10 April 1965).

[34] Ms. Mary G. Gaudron, President, Mr. Giuseppe Barbagallo and Ms. Dolores M. Hansen, Judges.

nesses, so that, save in the case of perjury or interference with the course of justice, those statements could not be the subject of separate proceedings. Such privilege enabled the parties to present their cases fully so that a decision could be reached on the whole of the available evidence.

Absolute privilege also operated to ensure the independence and impartiality of the judicial process. A tribunal would not be independent and impartial, nor seen to be so, if it were to assume the role of dictating to the parties the evidence and arguments that they could advance in their cases. Because the parties must have that freedom or privilege, a tribunal could not apply sanctions in separate proceedings with respect to the evidence or arguments advanced, particularly not after the proceedings had been completed.

Article II, paragraph 5, of the Statute of the Tribunal provided that it was competent to hear complaints "alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the [applicable] Staff Regulations". The real question raised by the complaint was whether those words extended to decisions taken by an organization with respect to the conduct of proceedings before the Tribunal. The complainant pointed to nothing in the Staff Regulations limiting the right of WMO to choose the manner in which it could defend proceedings brought against it by an official. And although the Tribunal accepted that various international norms and other general legal principles formed part of an official's terms of appointment, it would be inconsistent with fundamental legal principles and incompatible with the role of the Tribunal to import a term which impinged on the right of an international organization to choose the manner in which it defended proceedings brought against it in the Tribunal, whether by way of evidence or argument or by way of communication with the Tribunal relating to the proceedings. It followed that the complaint was not one "alleging non-observance [. . .] of the [complainant's] terms of appointment [or] the [applicable] provisions of the Staff Regulations" and, thus, was not one that the Tribunal was competent to hear.

3. Judgment No. 3020 (6 July 2011): F.M. v. World Trade Organization (WTO)[35]

Headquarters Agreement—Exemption from taxation of income earned as international civil servant—Staff Rule 106.11 of World Trade Organization (WTO) designed to guarantee equal pay for work of equal value—Increase in tax burden of a (non-staff member) spouse, owing to the inclusion of tax-exempt income in the calculation of payable tax, results in unjustifiable inequality, and is subject to a refund by the Organization

The complainant, a World Trade Organization (WTO) staff member at the grade 10 (P-5) level, was married and resided in the Canton of Geneva with her husband, who was not an international civil servant. On 2 June 1995 the Swiss Confederation had signed a Headquarters Agreement with WTO, under which officials at the P-5 grade were exempt from all federal, cantonal and communal taxes on salaries, emoluments and allowances paid to them by the Organization. The Genevan legislature had always respected the principle of exemption under public international law. But unlike the practice followed by the Federal Government, the Genevan Government's practice had consisted at the material

[35] Ms. Mary G. Gaudron, President, Mr. Seydou Ba, Vice-President, Mr. Claude Rouiller, Ms. Dolores M. Hansen and Mr. Patrick Frydman, Judges.

time of including an international civil servant's tax-free earned income in the assessment of a couple's tax rate, resulting in an increased combined tax burden.[36] The complainant, relying on WTO Staff Rule 106.11, had asked the Organization to reimburse the excess amount of income tax paid by her husband since 1990, owing to the fact that the income she had earned as an international civil servant, which was in principle exempt from all national taxation, had been taken into account when the rate of this tax was calculated, thus amounting to indirect taxation. In its response, the Organization maintained that Staff Rule 106.11 applied only to cases where the international civil servant was himself/herself subject to tax on income received from the WTO, and did not apply to the taxable income of a spouse who was not a staff member.

The Tribunal considered that it did not lie within its competence to examine whether the practice followed by the Genevan tax authorities in the case had been compatible with the provisions on the exemption enjoyed in principle by the complainant as a grade P-5 official employed by an international organization which had concluded a headquarters agreement with Switzerland. It was, however, incumbent upon it to examine whether the Organization had correctly applied staff rule 106.11, on which the complainant relied.

The main purpose of that provision was to give effect to the principle of equality, which signified that staff members of an international organization must receive equal pay for work of equal value. The rules applied by the Genevan tax authorities in the case had entailed a reduction in the complainant's economic capacity compared with that of an international civil servant at the same grade and in the same family situation but domiciled in a Swiss canton where the rate of income tax of a taxpayer living with his/her spouse who was an international civil servant would be calculated without reference to the latter's salary.

Thus, the Tribunal considered that the impugned decision not to reimburse the excess amount of income tax paid by her husband owing to the fact that the income she had earned as an international civil servant had been taken into account was unlawful. The Tribunal therefore set aside the impugned decision and ordered WTO to reimburse the excess amounts paid to the Genevan tax authorities and to pay costs, in accordance with staff rule 106.11.

The Tribunal, recalling staff rule 106.10, reduced the applicable period for the refund of excess taxation to that for the years 2007 and 2008 on the basis that the complainant had failed to submit a timely claim for the refund of excess taxation paid in earlier years.

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[36] The Act of 22 September 2000 on the taxation of natural persons, which had been applicable in the Canton of Geneva at the material time, had been repealed on 1 January 2010 by an Act of 27 September 2009. In both texts natural persons' income had been taxed progressively on the basis of income bands, and the incomes of couples living together had been added together for the purpose of determining the taxable amount. The progressive system based on income bands meant that that practice had increased the couple's tax burden in proportion to the size of the tax-free income, and had resulted in the indirect partial taxation of earned income which was in principle exempt from taxation.

4. *Judgment No. 2959 (2 February 2011): I.K.M. v. Organisation for the Prohibition of Chemical Weapons (OPCW)*[37]

Recruitment procedure of Chief of Cabinet—Violation of the right to compete for a post—Interpretation of Staff Regulation 4.3, requiring competitive hiring process "so far as practicable"—No explicit and specific exemption from the requirement that selection be made on a competitive basis—The existence of an established practice in violation of a rule could not have the effect of modifying the rule itself—Quashing of a direct appointment under Article VIII of the Chemical Weapons Convention

The complainant contested a decision to appoint a Chief of Cabinet of the Organisation for the Prohibition of Chemical Weapons (OPCW) directly, without holding a competitive process. The complaint was considered by the Appeals Council which held that the impugned decision breached staff regulation 4.3,[38] but considered the breach to be mitigated by the existence of a well-established practice of filling the post of Chief of Cabinet without holding a competition. The complainant contended that the Appeals Council had made an error of law in holding that a violation of the Staff Regulations could be mitigated by a practice. The complainant asked the Tribunal, inter alia, to set aside the impugned decision. In reply, OPCW maintained that the appointment of the Chief of Cabinet had not been made in violation of the Staff Regulations and Interim Staff Rules since the Director-General enjoyed a margin of discretion concerning appointments, particularly with regard to the decision whether or not to conduct a competitive process for the appointment of Chief of Cabinet.[39] It also noted that staff regulation 4.3 provided for competition "so far as practicable" which, in its view, was not the case with the appointment of the Chief of Cabinet, due to the nature of the position.

The Tribunal held that the impugned decision had violated the complainant's right to compete for the post of Chief of Cabinet, since staff regulation 4.3 provided no explicit and specific exception from the requirement that selection for the position be made on a competitive basis. The Tribunal further reiterated its position (see Judgment 2620) that the "impracticability" of the competitive selection process could not refer to a particular post. The expression "so far as practicable" could not be interpreted to mean that for certain specific posts a competitive selection process could automatically be considered as not practicable (*ubi lex voluit dixit, ubi noluit tacuit*). The Tribunal noted that the "impracticability" must instead relate to particular situations in which the Director-General might reasonably conclude that it was impossible to organize a competition, for example, where

[37] Ms. Mary G. Gaudron, President, Mr Giuseppe Barbagallo and Ms. Dolores M. Hansen, Judges.

[38] "Selection of staff shall be made without distinction as to race, gender or religion. So far as practicable, selection shall be made on a competitive basis. Selection and appointment of candidates shall also be done in a manner that ensures transparency . . .".

[39] Article VIII, paragraph 44, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction ("The Director-General shall be responsible to the Conference and the Executive Council for the appointment of the staff and the organization and functioning of the Technical Secretariat. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity . . .").

there was "a need to fill a vacancy quickly to relieve a backlog of work or to satisfy existing or future work commitments" (see Judgment 2620, under 9).

Furthermore, the existence of an established practice of directly appointing a Chief of Cabinet was not relevant, as a practice which was in violation of a rule could not have the effect of modifying the rule itself, and the fact that employees might be aware of such a practice did not prevent them from exercising their right to impugn a decision based on that practice whenever it affected them.

The Tribunal therefore set aside the impugned decision and the decision to appoint the Chief of Cabinet, without prejudice to the rights of the interested party, in accordance with the established jurisprudence of the Tribunal.

5. *Judgment No. 2972 (2 February 2011): R.B. and D.B. v. European Patent Organisation (EPO)*[40]

An International organization necessarily has power to restructure some or all of its departments or units, including by the abolition of posts, the creation of new posts, redeployment of staff and assignment of new or different shift work patterns—No acquired right to work night shifts—Duty of care to ensure that new work arrangements do not cause financial hardship to staff—Moral damages unwarranted owing to acceptance by the Organization that some provision had to be made to cushion financial impact of new work arrangements

The complainants had joined the European Patent Organisation (EPO) as security officers in 1990 and 1991, respectively. When they had joined, each had been informed that he would receive a flat-rate allowance, known as the "Van Benthem allowance", equal to 34.37 per cent of his basic monthly salary for working "outside normal working hours and on non-working days". It was subsequently decided that, as from 1 January 2006, the work performed by security officers on night shift would be outsourced, the Van Benthem allowance abolished, and new Guidelines would be introduced for shift work. As a result of these directives, the security officers were compensated for shift work, the total being significantly less than the Van Benthem allowances for work performed outside normal working hours, such that their total salary was reduced.

The complainants lodged internal appeals with respect to the decisions to apply the Guidelines to them. The President of the Office accepted the recommendation of the Internal Appeals Committee with respect to the adjustment of the transitional allowance.[41] The complainants impugned that decision before the Tribunal. The main argument advanced by the complainants was that they had an acquired right to work night shifts and, in consequence, to receive payment of the Van Benthem allowance calculated by reference to their basic salary as adjusted from time to time.

The Tribunal recalled its established jurisprudence that an acquired right was breached when "an amendment adversely affects the balance of contractual obligations by altering fundamental terms of employment in consideration of which the official accepted

[40] Ms. Mary G. Gaudron, President, Mr. Giuseppe Barbagallo and Ms. Dolores M. Hansen, Judges.

[41] The Internal Appeals Committee had recommended that the transitional allowance should be adjusted so that "the sum of the transitional allowance, the monthly basic salary and the standard shift allowance was no less than [their] monthly [. . .] salary on 31 December 2005".

an appointment, or which subsequently induced him or her to stay on".[42] An acquired right might derive "from the terms of appointment, the staff rules or from a decision".[43] In the case of each complainant, a decision had been taken when or shortly after he had joined the EPO that he would be paid the Van Benthem allowance for working "outside normal hours and on non-working days". The fact that that had not been specified in the employment contracts was not determinative of the question of acquired rights.

However, the Tribunal considered that there was a difficulty with the notion that the complainants had an acquired right to work night shifts, because an organization necessarily had a right to assign new or different shift work patterns. That consideration did not apply to an allowance.[44] However, the Tribunal recalled that an official "has no acquired right to the actual amount of the allowance or to continuance of any particular method of reckoning it. Indeed, he must expect these to change as circumstances change".[45] The complainants therefore did not have an acquired right to an immutable allowance calculated at 34.37 per cent of basic monthly salary.

However, it was apparent to the Tribunal that the EPO had at all stages accepted that the complainants were entitled to some transitional allowance that would cushion the effect of an immediate reduction in earnings. Leaving aside any question of legitimate expectation, the EPO must have known that the complainants had entered into financial obligations on the basis of the practice which was long-standing. In a context where there was a continuing need for security work to be performed at night, it had a duty of care to ensure that the new arrangements did not cause financial hardship to them. The only reasonable way the EPO could discharge its duty of care to cushion against financial hardship was to pay by way of allowance the difference between the actual amount of the Van Benthem allowance as at 31 December 2005 and the shift allowance payable in accordance with article 58(2) of the Service Regulations until such time as the shift allowance should equal or exceed the actual amount of the Van Benthem allowance paid on 31 December 2005.

For the above reasons, the Tribunal set aside the impugned decision.

The Tribunal further held that moral damages were unwarranted since the EPO has at all stages accepted that some provision had to be made to cushion the effect of the new work practices.

6. *Judgment No. 2996 (2 February 2011): M. C.B. v. European Molecular Biology Laboratory (EMBL)*[46]

Claims for invalidity pension arising from work-related injuries—Failure to exhaust internal remedies not a procedural bar where organisation is required

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[42] See *R.M.C.S., M.F.F., M.G.B. and J.L.T.M. v. International Olive Oil Council (IOOC),* Judgment No. 2682 (15 November 2007), paragraph 6 of the considerations.

[43] See *M.M.A., R.H., S.R.C. and B.S.G. v. Pan American Health Organization (PAHO),* Judgment No. 2696 (9 November 2007), paragraph 5 of the considerations.

[44] "An allowance may form an essential part of the official's contract [. . .] and its abolition would therefore constitute breach of [an] acquired right". See *In re Chomentowski (N0.2), Maugain (N0.3) and Niveau de Villedary (N0.3),* Judgment No. 666 (19 June 1985), paragraph 5 of the considerations.

[45] *Ibid.*

[46] Ms. Mary G. Gaudron, President, Mr. Seydou Ba, Vice-President and Mr. Patrick Frydman, Judge.

BY STAFF REGULATIONS TO INFORM OF THE RIGHT OF APPEAL, BUT FAILS TO DO SO—TRIBUNAL CANNOT REPLACE A MEDICAL FINDING OF A BODY WITH ITS OWN ASSESSMENT—TRIBUNAL COMPETENT TO ASCERTAIN WHETHER THE DECISION OF AN INVALIDITY BOARD HAD FOLLOWED DUE PROCESS—MEMBERS OF AN ADVISORY BODY MAY NOT EXAMINE A CASE ON WHICH THEY HAD PREVIOUSLY EXPRESSED A VIEW—NATIONAL LAW OF HOST STATE INAPPLICABLE TO TERMS OF EMPLOYMENT

The complainant had been recruited by the European Molecular Biology Laboratory (EMBL) in 1998. In 2007, she had applied for an invalidity pension on account of the after-effects of some work-related accidents of which she had been the victim. The Invalidity and Rehabilitation Board, having considered in its recommendation of 2008 that the complainant did not satisfy the conditions of entitlement to an invalidity pension, had dismissed her application in 2008. The complainant had then lodged an internal appeal against that decision. On 30 April 2008 the Director-General had decided, in view of the complainant's criticism, to cancel his initial decision and to reconvene the Board, constituted of the same members. The Board had confirmed its recommendation and the Director-General had therefore refused to grant the pension in 2009. The complainant had lodged a request against that decision.

The Tribunal recalled that while it could not replace the medical findings of a body such as an invalidity board with its own assessment, it did have full competence to say whether there had been due process and to examine whether the board's opinion showed any material mistake or inconsistency, overlooked some essential fact or plainly misread the evidence.[47]

The Tribunal did not uphold EMBL's argument that the complainant's application for an invalidity pension ought to be rejected for failure to exhaust internal means of redress as required by article VII, paragraph 1, of the Statute of the Tribunal. While it was recognized that the complainant had not lodged an appeal against the second decision of the Board prior to filing a complaint with the Tribunal, it was pointed out that the Staff Regulation in question specifically envisaged the Director-General informing a person concerned, inter alia, of his/her right of appeal. The Tribunal noted that "[w]hile procedural rules and time limits usually apply to officials of international organisations without it being necessary to recapitulate them when a decision is notified, this is not the case where a rule expressly establishes an obligation to provide this information when notifying a decision, as is the case here". Since such formality had not been respected, the principle of good faith required that an official's complaint would not be deemed irreceivable owing to his or her failure to lodge an internal appeal, if the organisation itself had not abided by the requisite formalities.

In the Tribunal's opinion, one of the complainant's pleas concerning the lawfulness of the proceedings was of decisive importance in the case, namely her plea that when the Invalidity and Rehabilitation Board issued its second recommendation it had been improperly constituted in that it had comprised the same members as those who had already expressed an opinion on the granting of the disputed invalidity pension in 2008. This fact alone had objectively prevented the Board from being able to issue its second

[47] See *In re Fahmy (N0.2),* Judgment No. 1284 (14 July 1993), paragraph 4 of the considerations; *A.T. v. European Patent Organisation (EPO),* Judgment No. 2361 (14 July 2004), paragraph 9 of the considerations.

recommendation with the requisite impartiality, even though its members had subjectively considered that they could again take an unprejudiced decision on the case.

As the Tribunal had found in Judgment Nos. 179[48] and 2671,[49] the rule that members of an advisory body must not examine a case on which they had previously expressed a view applied even in the absence of an express text, since its purpose was to protect officials against arbitrary action. For the aforementioned reasons, the complainant was awarded costs and the case was referred back to EMBL in order that the Director-General take a new decision on the application after consulting the Invalidity and Rehabilitation Board, whose members must be different from those of the previous Board.

The Tribunal also held that the complainant's reliance on the national law of the organization's host State (Germany) was misplaced, since her terms of employment with exclusively governed by the Staff Rules and Regulations of the EMBL.

7. Judgment No. 2966 (2 February 2011): Amaizo v. United Nations Industrial Development Organization (UNIDO)[50]

Receivability of an appeal—If an appeal is time-barred and the internal appeals body was wrong to hear it, the Tribunal will not entertain a complaint challenging the decision taken on a recommendation of that body—Means of notification of a reassignment of post—Notification by e-mail is valid

The complainant impugned the Director-General's decision of November 2008 insofar as it had dismissed his first appeal directed against the decision to reassign him to Bangkok. The complainant disputed the validity of the notification of his reassignment, having been notified by means of an e-mail dated 16 August 2007. The organization argued that the complaint was irreceivable under article VII, paragraph 1, of the Statute of the Tribunal, as well as for the reason that his internal appeal had been out of time.

The complainant contended that e-mails were of no legal value unless they were accompanied by an official document serving as an acknowledgement of receipt. In addition, he stated that he had had no access to the Internet between 16 and 27 August 2007, while on mission in Africa, and could not therefore have consulted his e-mail. He indicated that it was only on 28 August 2007, upon his return from mission, that he had become aware of the memorandum of 15 August 2007.

The Tribunal deemed notification by e-mail to be valid.[51] However, it could not accept the complainant's assertions because it was clear from the submissions that, during his mission, the complainant had stayed in hotels with Internet access and that, in those circumstances, it was improbable that an international civil servant of his level could

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[48] See *In re Varnet,* Judgment No. 179 (8 November 1971). The Tribunal had held that members of a body advising the executive authority of an international organization could not participate in deliberations and were therefore bound to withdraw if they had "already expressed their views on the issue in such a way as to cast doubt on their impartiality". See *In re Varnet,* Judgment No. 179 (8 November 1971).

[49] See *C.R.F. v. European Patent Organisation (EPO),* Judgment No. 2671 (5 November 2007).

[50] Mr. Seydou Ba, Vice-President, Mr. Claude Rouiller and Mr. Patrick Frydman, Judges.

[51] See *C.C.R.J.D v. International Criminal Court (ICC),* Judgment No. 2677 (2 November 2007), paragraph 2 of the considerations; and *W.A. v. European Patent Organisation (EPO),* Judgment No. 2947 (28 April 2010), paragraph 12 of the considerations.

have spent days without consulting his e-mail. Furthermore, his allegations were contradicted by evidence in the file showing that he had accessed his official e-mail account on 20 August 2007.

The Tribunal concluded from the foregoing that the complainant had plainly learned of the decision of 15 August 2007 on 20 August 2007 at the latest. Notification of this decision was thus regarded as having taken place on 20 August 2007 and the 60-day period stipulated by the relevant provision of the Staff Rules was therefore computed from that date. The internal appeal had therefore been lodged out of time. The Tribunal's case law established that, if an appeal was time-barred and the internal appeals body was wrong to hear it, the Tribunal would not entertain a complaint challenging the decision taken on a recommendation of that body.[52] It followed that the complaint was declared irreceivable.

8. *Judgment No. 3012 (6 July 2011): Toa Ba v. World Health Organization (WHO)*[53]

Receivability of an appeal—Time limits in procedural rules—Requirement to exhaust all internal means of redress—Duty of care to indicate means of redress and time limits clearly in relation to a decision

Following a lengthy procedure dating from 2001 aimed at determining the complainant's claim for medical compensation, the complainant challenged before the Tribunal the decision of the Director-General of the World Health Organization (WHO) to reject his request that the Organization recognise a causal link between his illness and his official duties. The WHO maintained that the complaint was irreceivable for failure to exhaust all means of redress within the meaning of article VII, paragraph 1, of the Statute of the Tribunal.

The Tribunal recalled that, according to its case law, a complaint could not be receivable unless the decision impugned was a final decision and the person concerned had exhausted such other means of resisting it as were open to him. The only exceptions allowed to that requirement were cases where staff regulations absolved the complainant from initiating a prior internal appeal procedure, where there was an inordinate and inexcusable delay in the internal appeal procedure, where for specific reasons connected with the personal status of the complainant he or she did not have access to the internal appeal body or, lastly, where the parties had mutually agreed to forgo the requirement that internal means of redress must be exhausted.[54] In the present case, the complainant challenged the Director-General's decision directly before the Tribunal, without first having had recourse to the Headquarters Board of Appeal. Since the circumstances did not war-

[52] For example, see *P.A. v. European Patent Organisation (EPO),* Judgment No. 775 (12 December 1986, paragraph 1 of the considerations; and *C.F. v. United Nations Educational, Scientific and Cultural Organization (UNESCO),* Judgment No. 2297 (7 November 2003) paragraph 13 of the considerations.

[53] Mr. Seydou Ba, Vice-President, Mr. Claude Rouiller and Mr. Patrick Frydman, Judges.

[54] For example, see *R.a.m.A. and Y.R.G. v. European Organization for Nuclear Research (CERN),* Judgment No. 1491 (1 February 1996); *J.M.B. v. Organisation for the Prohibition of Chemical Weapons (OPCW),* Judgment No. 2232 of 15 May 2003; *T.K. v. European Patent Organisation (EPO),* Judgment No. 2243 (5 May 2005); *A.F.H. v. United Nations Industrial Development Organization (UNIDO),* Judgment No. 2511 (3 November 2005); and *B.E.C. v. International Federation of Red Cross and Red Crescent Societies,* Judgment No. 2912 (7 May 2010).

rant a derogation from the rule governing the exhaustion of internal means of redress, it followed that the complaint was not receivable.

However, the Tribunal observed that the decision of the Director-General had failed to mention the means of redress and the relevant time limits. It was true that, in the absence of any statutory provision requiring such a reference, that omission would not ordinarily, according to the established jurisprudence of the Tribunal, constitute a flaw warranting restoration of the time limit. However, in the very specific circumstances of the case, given the complexity of the applicable rules of procedure, the duration of the procedure and the complainant's serious disability, the Organization's duty of care required it to indicate those means of redress and time limits clearly in its decision. The Tribunal therefore accorded the complainant a new time limit to appeal to the Headquarters Board of Appeal, starting from the date on which he was notified of the present judgment.

9. Judgment No. 3009 (6 July 2011): Hoening (no. 3) v. Universal Postal Union (UPU)[55]

Request for home leave—The fact of marriage to foreign national or adoption of foreign nationals sufficient for entitlement to home leave in one of those countries only if staff member maintained normal residence there for a prolonged period preceding appointment—Right to be heard—Purely internal documents do not, in principle, have to be communicated to the staff member

The complainant challenged before the Tribunal a decision of the Director-General of the Universal Postal Union (UPU) to reject a request for home leave in the country of his choice. By Judgment No. 2389, the Tribunal had dismissed his complaint because he had not lived in Germany, the country to which he claimed as his home, since his early childhood. Having married a French national in 1992, the complainant subsequently acquired French nationality through a declaration made on 19 March 2008. He and his wife had adopted three children of Indian origin. On 30 May 2008, the complainant submitted a new request for home leave in France, or in India, or in Germany, based on a passage in Judgment No. 2389 indicating that the home country was not necessarily that of a staff member's nationality, but could be the country in which the staff member had the closest connection outside the country where he was employed, for example the country of origin of his spouse, or that of children whom he had adopted or taken in but who he believed should keep up their connections with their native environment. Upon the recommendation of the Joint Appeals Committee, the Director-General announced that he was maintaining his previous decision to reject the request for home leave.

The complainant accused the defendant of having concealed documents which he needed for his defence before the Tribunal, namely an initial version of the report of the

[55] Mr. Seydou Ba, Vice-President, Mr. Claude Rouiller and Mr. Patrick Frydman, Judges.

Joint Appeals Committee.[56] This grievance, as framed by the complainant, concerned a violation of the right to be heard, and therefore of the right of the parties to be made aware of and to consult relevant documents in the case file.[57] The Tribunal considered that there was no rule requiring the defendant to notify the complainant of the Committee's first report, which did not contain the reasons for the impugned decision. It maintained that documents which related to the manner in which members of the Committee had reached their conclusion were purely internal and did not, in principle, have to be communicated to the staff member concerned. The Tribunal therefore concluded that the complainant's exercise of his rights of defence had not been hampered in any way, contrary to his assertions, and that the grievance that relevant documents had been unduly withheld, so violating his right to be heard, was unfounded.

With regard to the substance the request for home leave, the Tribunal recalled its established jurisprudence on the matter and emphasized that the complainant was required to show that he had maintained his normal residence in the requested country for a prolonged period preceding his appointment, and that there had to be close and continuing ties between him and that country, sufficient to give him the right to take home leave there.[58] The Tribunal therefore concluded that the fact that he had married a French national and had adopted Indian children was not sufficient for him to be entitled to home leave in France or in India. The complainant would also have had to have had his normal residence, for a prolonged period preceding his appointment, in one or other of those countries, which was not the case. The Tribunal therefore dismissed the complaint.

[56] The Tribunal noted that the report on which the impugned decision had been based had been drawn up in a somewhat unusual manner. In effect, the Joint Appeals Committee had submitted an initial report to the Director-General concluding that he "could authorise the complainant to take home leave in a country other than his country of nationality" given that "his request for home leave in France or in India could be regarded as a new element". The Director-General had taken the view that there was a contradiction in the report between the reasoning and the conclusions and that he therefore could not take an informed decision, and he had invited the Committee to clarify it. The Committee had then discussed the matter anew and had reviewed its initial report. In its recommendation, it had taken the view that its initial opinion should be altered to the disadvantage of the complainant.

[57] See *M.T.V. v. United Nations Educational, Scientific and Cultural Organization (UNESCO),* Judgment No. 2927 (8 July 2010), paragraph 11 of the considerations.

[58] See *B.H. v. Universal Postal Union,* Judgment No. 2389 (18 November 2004), paragraph 7 of the considerations.

D. Decisions of the World Bank Administrative Tribunal[59]

1. *Decision No. 448 (25 May 2011): JYK (No. 1 and No. 2) v. International Bank for Reconstruction and Development*[60]

Termination of employment on grounds of misconduct—Jurisdictional objection—Staff rule 8.01—Due process in misconduct investigations—Jurisdiction of peer review service in accordance with staff rule 9.03, paragraph 6.04(d)—Scope and standard of review of investigative proceedings—Scope of review of disciplinary sanctions—Proportionality of sanctions—Rescission of disciplinary measures

The Applicant challenged the decision of the Bank to terminate his employment contract. On 29 October 2008, the Applicant was interviewed by the Department of Institutional Integrity (INT) in connection with the unauthorized disclosure of confidential and non-public documents of the Bank's Board of Directors to a journalist who published two articles dated 10 October 2008 and 31 January 2007, on FoxNews.com. The Applicant admitted that he disclosed information contained in the 31 January 2007 article but denied involvement with the 10 October 2008 article. On 10 July 2009, INT issued its final report to the Vice President of Human Resources (HRSVP). The investigation determined that there was reasonably sufficient evidence, including the Applicant's admission, that he provided the confidential and non-public documents hyperlinked in the article of 31 January 2007. While there was significant circumstantial evidence to support the allegations that the Applicant was also the source for the confidential and non-public documents hyperlinked in the article of 10 October 2008, the totality of the evidence was insufficient to substantiate or refute those allegations.

HRSVP concluded that there was sufficient evidence of misconduct in relation to the 31 January 2007 article, and informed the Applicant of the decision to terminate his employment with effect from 9 January 2010. The Applicant challenged HRSVP's decision before the Peer Review Service (PRS). By letter dated 2 March 2010, PRS informed the Applicant that pursuant to staff rule 9.03, paragraph 6.04(d), it lacked authority to review "actions, inactions, or decisions taken in connection with staff member misconduct investigations." On 1 June 2010, the Applicant challenged the Bank's decision to terminate his employment before the Administrative Tribunal, and filed a second application on 28 July 2010 challenging PRS' decision on its jurisdiction.

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[59] 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, the Multilateral Investment Guarantee Agency and the International Centre for the Settlement of Investment Disputes (collectively "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 full texts of its decisions, see http://www.worldbank.org/tribunal.

[60] Stephen M. Schwebel, President, Florentino P. Feliciano, Vice-President, Mónica Pinto, Vice-President, and Judges Zia Mody, Francis M. Ssekandi, and Ahmed El-Kosheri.

The Tribunal recalled the standards set in its precedents regarding the review of disciplinary cases, particularly *Koudogbo*, Decision No. 246 [2001], and noted that its scope of review in disciplinary cases was not limited to determining an abuse of discretion, but involved an examination of: (i) the existence of the facts; (ii) whether they legally amounted to misconduct; (iii) whether the sanction imposed was provided for in the law of the Bank; (iv) whether the sanction was not significantly disproportionate to the offence; and (v) whether the requirements of due process were observed.

On the existence of the facts, the Tribunal noted that in leaking extracts of deliberations of the Bank's Board, which were characterized as confidential information under paragraph 83 of the 2002 Policy on Disclosure of Information, the Applicant's actions legally amounted to misconduct in violation staff rule 3.01, paragraph 5.01, and principle 3.1 of the Principles of Employment. As the Tribunal was unable to discern from the content of the documents anything that reasonably demonstrated misconduct, the Tribunal could not find any legitimate justification for the disclosure which would have afforded the Applicant protection as a whistleblower. The Applicant's claims that he was a whistleblower therefore failed.

In considering whether the sanctions imposed against the Applicant were disproportionate to the gravity of his actions, the Tribunal recalled its decision in *Gregario*, Decision No. 14 [1983], in which it noted that "there must be some reasonable relationship between the staff member's delinquency and the severity of the discipline imposed by the Bank." The Tribunal observed that though the Applicant may have been unaware of the confidential nature of the documents he leaked, the Staff Rule in question provided that misconduct did not require malice or guilty purpose. Additionally, the fact that other members of staff may have been involved in disseminating the documents around the Bank did not relieve the Applicant of his own obligation to keep such information confidential. Nevertheless, the Tribunal held that the Applicant's actions had to be assessed in the context of the extraordinary circumstances at the time, and noted the Bank's failure to adopt an even-handed approach in its investigation of the source of the leaks. As a result, despite finding that HRSVP's decision to impose sanctions upon the Applicant was not unjust, the decision to terminate the Applicant's employment was deemed disproportionate in light of the prevailing circumstances at the time.

The Tribunal then addressed the Applicant's claims of denial of due process, finding first that INT complied with the Staff Rules then in force regarding the timing and type of notice provided to the Applicant. The Tribunal considered that the Applicant received a fair opportunity to provide his responses to the allegations, and the record demonstrated that the Applicant's responses were considered by HRSVP before he rendered his decision. Additionally, the Tribunal found that INT secured the necessary authorization to conduct a search of the Applicant's computer files and electronic messages as it bore a reasonable suspicion that the Applicant engaged in misconduct. However, the Tribunal held that the Bank's search methods of the Applicant's Bank-owned computer were unduly expansive and failed to respect the careful balance between the Bank's interest in electronic files as an employer and property owner and the staff member's interest in a reasonable measure of privacy as was established in D, Decision No. 304 [2003]. Furthermore, while the Tribunal was satisfied that the Applicant had had the opportunity to question the basis of INT's authority to search his computer, it observed that the Bank should have provided the Applicant with proof of the authorization to search his computer when initially requested.

The Tribunal noted that there was no justifiable reason for requiring staff members to pursue their grievance as far as the Tribunal in furnishing the Applicant with a copy of the authorization. The Applicant also challenged the restrictions on his ability to reproduce or electronically copy the INT Final Report; however, the Tribunal was unconvinced that those restrictions denied the Applicant the opportunity to defend himself effectively. Lastly, the Tribunal rejected the Applicant's claim that he was deprived of an opportunity to respond to new allegations raised in HRSVP's letter of 23 December 2009 as the letter merely recited the applicable standards and related factors, of which the Applicant had been notified in the Notice of Alleged Misconduct.

Concluding its findings, the Tribunal observed that the Applicant committed a serious breach of the Staff Rules by leaking confidential information and had to be held accountable. Nevertheless, the Tribunal considered the circumstances in which the Applicant committed the misconduct and observed that though confidential information was being leaked at all levels of the Bank, investigations were not undertaken during that time into other such leaks. In particular, the Tribunal found that INT had contented itself with pursuing the Applicant and did not undertake investigations into the initial source of the leaked information. Under those circumstances, the Tribunal concluded that termination of employment, the most severe sanction available to HRSVP, was a disproportionate sanction. The Bank was ordered to reinstate the Applicant as a staff member with effect from the date of the judgment but was entitled to impose an alternative disciplinary measure from the list set out in staff rule 8.01, paragraph 3.03.

2. *Decision No. 455 (25 May 2011): BP v. International Bank for Reconstruction and Development*[61]

Termination of service—Mandatory disciplinary measure for conviction of felonious criminal offence according to staff rule 3.00, paragraph 10.09—Due process in Office of Ethics and Business Conduct (EBC) review of misconduct allegations—Failure to conduct a fact finding causing prejudice to the applicant—Right of tribunal to review discretionary decisions—Factors in the exercise of discretion—Proportionality of measures—Extenuating circumstances

The Applicant challenged the Bank's decision to terminate her employment after she pleaded guilty to two felony counts of making false statements to the Federal Bureau of Investigation (FBI), an enforcement arm of the U.S. Department of Justice. The Applicant had been investigated by the FBI in relation to allegations of human trafficking and abuse of her domestic employee (a G-5 visa holder). She was however, never indicted of any crime; rather the FBI offered her the possibility to plead guilty without indictment to two counts for having made false statements to the FBI in the course of its investigation. Following her guilty pleas, she was placed on administrative leave and subsequently received a Notice of Misconduct which referred to the pleas and to the review conducted by the Office of Ethics and Business Conduct (EBC) under staff rule 3.00 (sections 8, 9 and 10). Contrary to the procedure noted in the Notice, the Applicant was later informed she would not be interviewed. In addition she was provided with a post-dated draft "Summary Case Report" which recommended a finding of misconduct by reason of her guilty pleas, adding that the

[61] Florentino P. Feliciano, Vice-President as President, Monica Pinto, Vice-President, and Judges Jan Paulsson and Zia Mody.

false statements had been made "in connection with a U.S. Government investigation into allegations of human trafficking and abuse of [her] G-5 Visa holder domestic employee." Following her complaint that she had not been given the opportunity to present her case, the Applicant was interviewed by EBC. However, she was informed that it was a courtesy interview and stated that "[t]here wasn't anything to look at either way, either mitigating or aggravating . . . once there has been a felony conviction there is really honestly nothing to fact-find other than the documents from the court . . . any extenuating circumstances outside of that would be outside of our scope".

In considering the merits, the Tribunal expressed fundamental concern with the Bank's position on two separate features of the case. The first was procedural, related to the duty to pay due attention to an individual staff member's personal circumstances prior to exercising discretion. The second was substantive and concerned disciplinary matters which involve a broader standard than "abuse of discretion" and specifically justify the Tribunal's need to appraise the proportionality of sanctions. Recalling *S*, Decision No. 373 [2007], the Tribunal held that the review of sanction decisions "will take into account factors such as the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures may be imposed." According to the Tribunal, those factors were to have guided the Vice President of Human Resources (HRSVP) in the exercise of his discretion.

The Tribunal addressed due process and considered that EBC did not exhaust its mandate under the Staff Rule. The Tribunal noted that Staff Rule 3.00 required EBC to review and assist in the resolution of allegations of misconduct under paragraph 6.01(d), and that no exceptions were made for conviction of felonious criminal acts. In that regard, the Tribunal considered that there was no warrant for a merely "limited" review in a case of misconduct consisting of a felony conviction. The EBC was under an obligation by virtue of paragraph 10.01 to conduct "a fact finding to determine further information regarding the substance and circumstances of the matter". The Applicant had been informed by the Notice of Misconduct that EBC had determined, after conducting an "initial review," that further review would be appropriate in her case, that "fact finding" would take place and that all steps constituting this further review under the Staff Rule would follow. The Applicant was therefore entitled to expect that fact finding would be carried out which could unearth "information regarding the substance and circumstances of the matter" underlying the technical legal nature of the "felony" and thus any mitigating factors.

The Tribunal found that the steps indicated in the Notice of Misconduct were either not followed at all or not followed in the order required by the Staff Rule. Additionally, no facts underlying the circumstance and substance of the matter were presented in the body of the EBC report. The Tribunal noted that simply attaching documents without presenting and justifying conclusions drawn from them, or recording the summary findings of a court judgment without any investigation of the facts surrounding its circumstances, while nevertheless alluding to them in the conclusion without any explanation, led to an incomplete presentation of findings likely to result, in turn, in an erroneous review of the factors to be properly taken into account.

On the question of the proportionality of the disciplinary measures adopted by HRSVP, the Tribunal emphasized that while it had no mandate to assume the exercise

of HRSVP's disciplinary discretion, it was nevertheless required to assess the exercise of that discretion. To that end, the Tribunal observed that the Applicant's alleged misconduct concerned two false statements made to FBI investigators, namely, misrepresenting the nature of a financial transaction with a domestic employee, and denying that she had threatened the same employee. The Tribunal took note of the concession by the Bank's Lead Human Resources Specialist (HRSCO) that there might be types of "felonies" which, while unquestionably within the reach of staff rule 3.00, paragraph 10.09 and thus constituting misconduct sanctionable by dismissal, would, as a matter of official discretion, not necessarily lead to the drastic consequence of termination of employment. In addition, the Tribunal observed the similarity of the present case to *O'Humay* Decision No. 140 [1994] and noted the disparity in the disciplinary sanctions adopted by the Bank.[62]

Following an assessment of the Applicant's account of the circumstances of the case, the Tribunal held that what mattered was not so much the ultimate accuracy of her detailed account, but the plausibility thereof and the light that it would shed on the circumstances of her misconduct. The Tribunal opined that the critical question was how HRSVP conducted his evaluation of factors pertaining to extenuating circumstances as to proportionality. In addition, the Tribunal enquired what HRSVP might have made of the Applicant's circumstances had he properly addressed them as a matter of sanctioning discretion, particularly as to extenuating circumstances and seriousness of the case of the felony. The Tribunal took note of the HRSCO's statement that the refusal of the HRSVP to exercise discretion in the Applicant's favour was based on the context of her guilty plea rather than on the simple fact of falsity of particular statements to the FBI. However, the Tribunal held that if the word "context" was to have substance, it had to refer to more than making a single connection to the fact that the occasion of the falsehood was an inquiry into a matter which was sensitive for the Bank. "Context" required an appraisal of the materiality of the falsehood in light of broader circumstances, and a sense of proportionality consonant with the Bank's own precedents.

Considering all the circumstances, the Tribunal ruled that HRSVP's decision to terminate the Applicant's employment was a disproportionately grievous sanction *vis-à-vis* the misrepresentations made by the Applicant. The Tribunal criticized the decision as the exercise of sheer authority rather than a reasoned act of discretion, and emphasized that discretion required a sincere evaluation of relevant elements, principally extenuating circumstances and proportionality in that case. According to the Tribunal, a mere declaration that such elements had been considered would not suffice. The Tribunal concluded that the desire to show severity with respect to abuse of G-5 employees in the Bank's own "reputational" interest was no excuse for failing to accord due process in the individual case. For those reasons, the Bank's decision to terminate the Applicant's employment was rescinded, and the Tribunal ordered her reinstatement to the same position or a position similar to the one occupied at the time her employment was terminated. In addition, the Bank was ordered to pay the Applicant compensation in the amount of one year's salary net of taxes and to contribute to her costs.

[62] See *Safari O'Humay v. International Bank for Reconstruction and Development*, Decision No. 140 (14 October 1994). The Bank had applied alternative disciplinary sanctions for similar acts of misconduct.

3. *Decision No. 460 (11 October 2011): DMK v. International Bank for Reconstruction and Development*[63]

Benefits on ending employment—Reasonable interpretation of staff rule 7.02—Claim of unfair and unequitable treatment during relocation—Non-duplication of resettlement benefits provided by subsequent employer—Non-retroactive application of new rules

The Applicant retired from the Bank as a Manager (level GH) and prior to his resignation accepted a two-year fixed term appointment as Director, Office of Internal Audit with the United Nations Children's Fund (UNICEF). Upon formally informing the Bank's Human Resources Unit (HR) of his retirement, the Applicant received a 13 page memorandum entitled "Information/Benefits Upon Ending Employment". Paragraph 31 of the memorandum stated that the Bank Group would pay a resettlement grant of $5,000 for a staff member resettling without dependent children, and $7,000 for a staff member resettling with dependent children. Paragraph 32 stated: "Consistent with industry practice, the Bank Group will not provide resettlement benefits to the extent that they duplicate benefits provided by your next employer . . ." The Applicant elected to receive the Shipment of Household Goods and Personal Effects benefit from the Bank, and the Lump Sum Option for Travel and the Assignment Grant benefits from UNICEF. Following his retirement, the Applicant was informed on 29 July 2010 that he was neither eligible for the Bank's Resettlement Grant, as this was duplicated by the daily subsistence allowance (DSA) that he would receive from UNICEF, nor the Bank's Excess Baggage Grant, as this was included in the Lump Sum Travel benefit paid to him by UNICEF.

The Applicant challenged the HR Officer's decision and ultimately requested the assistance of the Ombudsman in resolving the dispute regarding the Resettlement Grant and the Excess Baggage Grant. On 7 September 2010, the Applicant filed a Request for Review with the Peer Review Service (PRS) challenging the administrative decision not to pay him the Resettlement Grant and the Excess Baggage Grant. The latter claim was not reviewed by PRS as the Applicant verified on 30 September 2010 that the Bank had deposited the sum into his bank account. PRS found in the Applicant's favour and recommended that the Human Resources Service Center (HRSSC) perform another review of the Applicant's case based on the plain meaning of staff rule 7.02, paragraphs 3.04 and 10.05. It also recommended that the Applicant should be paid a portion of the Resettlement Grant in an amount that was equitable to him to cover the costs for "preparations during a move to" his place of resettlement. The Vice President of Human Resources (HRSVP) advised the Applicant by letter dated 24 January 2011 of his decision not to accept the recommendation of PRS. It was that decision which was impugned before the Tribunal.

The Tribunal conducted an examination of the written record as well as the benefits to which the Applicant was entitled under both grants to address the question of whether the Bank correctly interpreted and applied staff rule 7.02 and all other applicable rules in the Applicant's case when it denied him the Resettlement Grant. The Tribunal observed that pursuant to staff rule 7.02, paragraph 3.04, a Resettlement Grant was provided by the Bank to "help defray costs associated with preparations during a move to and settling-in

[63] Stephen M. Schwebel, President, Florentino P. Feliciano, Vice-President, Mónica Pinto, Vice-President, and Judges Francis M. Ssekandi and Ahmed El-Kosheri.

at the place of resettlement, including the cost of transporting pets." With respect to the United Nations Assignment Grant, following a review of the United Nations Administrative Instruction and the International Civil Service Commission (ICSC) February 2009 and August 2010 booklets, the Tribunal found that it essentially covered the same types of costs as the Bank's Resettlement Grant. In particular, the February 2009 booklet described the intention of the Assignment Grant as providing staff "with a reasonable cash amount at the beginning of the assignment for the costs incurred as a result of appointment or reassignment. Its purpose is to enable staff to meet removal/installation related costs . . . and is based on the assumption that the main expenses of installation are incurred at the outset of an assignment." The Tribunal concluded that a textual, as well as purposive, interpretation of the Bank's Staff Rule and the relevant United Nations documents left no doubt that the Assignment Grant and Resettlement Grant covered the same costs associated with "settling in" or "taking up residence" at the place of relocation. The Tribunal found that the Bank, in comparing the two sets of benefits, had reasonably interpreted the relevant documents and denied the award of the Bank's Resettlement Grant as it would duplicate the Assignment Grant from UNICEF.

Regarding the retroactive application of the rules contained in the August 2010 ICSC booklet, the Tribunal recalled its decision in *Naab*, Decision No. 173 [1997], in which it held that prohibited retroactivity involved the application of a new rule to legal rights and situations operative, begun and consummated prior to the coming into force of the new rule. The Tribunal found that the definition and purpose of the Assignment Grant had always been the same since 2000 and agreed with the Bank that the August 2010 booklet did not introduce any amendments, but rather explained the purpose of the Assignment Grant. The Tribunal therefore held that the Bank did not apply a new rule to the Applicant's case retroactively.

Finally, the Tribunal addressed the Applicant's complaint about the treatment of his case by HRSSC. The Tribunal observed that as the Applicant chose to receive from UNICEF two of the three benefits related to his relocation and one from the Bank, the possibility of misunderstanding regarding the particular costs that each benefit covered was understandable. However, the Tribunal found that any confusion was quickly dispelled and the Applicant was informed of the type of benefits he would receive from the Bank. Furthermore, the Tribunal found of no particular significance the fact that the Bank initially equated the Resettlement Grant with part of the Assignment Grant and a month later equated the Resettlement Grant with the entire Assignment Grant. What mattered was that the Applicant was notified at all times that he was not entitled to a Resettlement Grant from the Bank. The Tribunal opined that the Applicant failed to demonstrate that he suffered compensable injury in this regard. The Applicant had found himself in a highly favourable financial position during his relocation since he was in a position to select which of the benefits offered by both organizations were most beneficial to him. As a result, the Tribunal found that any claim of unfair and inequitable treatment of the Applicant by the Bank during his relocation was not sustainable. The Tribunal held that there was no violation of the Applicant's contract of employment or terms of appointment and dismissed the Applicant's claims.

F. Decisions of the Administrative Tribunal of the International Monetary Fund[64]

1. *Judgment No. 2011–1 (16 March 2011): Ms. C. O'Connor (No. 2), Applicant v. International Monetary Fund (IMF), Respondent*[65]

Jurisdiction of the Administrative Tribunal—Admissibility pursuant to article V of the Statute of the Tribunal—Jurisdiction of the IMF's Grievance Committee—The IMF's Managerial and policy discretion cannot limit the jurisdiction of the Tribunal—Standard of review of position reclassification decisions—Governing procedures for job audit—Administrative review of a position reclassifciation decision within IMF—Abuse of discretion in reclassification decisions—Right to challenge job reclassification decisions before the Tribunal—Discrimination in the workplace—"Continuing harm"—Good faith

The Applicant contested the decision of the International Monetary (IMF or "the Fund") to reclassify her position from Senior Administrative Assistant (Secretary, Division) at Grade A7 to Senior Administrative Assistant (Office Services) at Grade A8. The principal issue raised by the Applicant is whether the IMF abused its discretion in reclassifying her position. Following the Applicant's request for administrative review, the Fund's Grievance Committee dismissed the majority of the Applicant's claims for lack of jurisdiction and concluded that the Applicant had not established any corruption or lack of integrity in the job audit process. On 23 August 2010, the Applicant filed an application with the Administrative Tribunal.

The Tribunal addressed, as a threshold matter, the Fund's challenge to the admissibility of the application on the basis of a Fund rule that expressly precludes a challenge to a job reclassification decision by the incumbent staff member. The Tribunal rejected this argument, concluding that the Fund's managerial and policy discretion does not extend to setting limits on the jurisdiction of the Administrative Tribunal as granted by its Statute. To permit the IMF, through the issuance of a human resources directive to carve out exceptions to the Tribunal's jurisdiction would be contrary to the intent and to the text of the jurisdictional provisions of the Statute.

Citing the Commentary on the Statute of the Tribunal, article II, section 1.a, the Tribunal held that Applicant's challenge to the position reclassification decision was one that fell within the scope of the Tribunal's jurisdiction, which, by its terms, is designed to afford recourse to a "member of the staff challenging the legality of an administrative act adversely affecting him." Additionally, the Tribunal invited the Fund to reconsider its

[64] 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 (accessed on 31 December 2011).

[65] Catherine M. O'Regan, President, Nisuke Ando and Michel Gentot, Judges.

internal law in light of the Tribunal's conclusion that the Applicant has standing to contest the position reclassification decision.

Turning to the merits of the Application, the Tribunal first considered whether the job reclassification decision was taken consistently with the Fund's internal law and with fair and reasonable procedures. The Applicant contended that: (a) the job auditors in the Compensation and Benefits Policy Division (CBD) of the Human Resources Department did not meet the qualifications set by the Fund for undertaking such assignment; (b) CBD was unduly influenced by or improperly "took the direction of" Applicant's Department; (c) CBD improperly took account of a 2005 audit of the position in carrying out the job audit of 2007; and (d) the job auditors improperly failed to contact persons mentioned by the Applicant in the Position Description Questionnaire (PDQ) with whom she stated she had interacted in relation to her work responsibilities.

The Tribunal examined each of these allegations, concluding, based upon the evidence in the record, that the Applicant had failed to meet her burden of showing that the contested decision had been carried out inconsistently with Fund rules or fair procedures. In the view of the Tribunal, it was clear that the CBD staff members who performed the job audit met the qualifications for that assignment. As to Applicant's contention that her Department improperly influenced the outcome of the decision, the Tribunal observed that the governing rules provide that CBD first undertake an audit and then circulate a draft report to the requesting Department. "This process of responsive communication is precisely what the [Fund's] policy contemplates and, in the view of the Tribunal, cannot be interpreted as improper influence." The Tribunal also rejected Applicant's claim that the 2007 position reclassification decision had been improperly affected by a 2005 job audit, finding that those who performed the 2007 audit reached their decision on different facts and independently of the 2005 job audit." As to Applicant's complaint that the job auditors failed to consult with all of the persons mentioned in the PDQ, the Tribunal concluded: "Discretion lies with the human resources professionals to determine which persons are relevant to substantiating the responsibilities carried out in the position under review. These decisions are a matter of expertise."

The Tribunal next examined whether the reclassification decision was based on an error fact or law. The Applicant asserted that the outcome of the job audit did not represent a proper classification and grading decision based upon the content, functions, and responsibilities of the position but rather, a way to simply promote her. The Tribunal observed that the right of a staff member to be properly graded and classified encompasses not only an accurate description of the level of responsibilities discharged by the staff member but also of the essential nature of those responsibilities. Decisions of this nature are generally beyond the expertise of the Tribunal. However, in light of all the evidence, the Tribunal found that there is no basis on which to sustain the Applicant's claim: "The decision was a reasonable one, taken after the consideration of relevant evidence. In the circumstances, the Tribunal will not second-guess the judgment of CBD in performing the job reclassification exercise."

The Tribunal additionally considered whether, as alleged by the Applicant, the reclassification decision was affected by racial discrimination or bad faith by her departmental managers. In the view of the Tribunal, the record indicated, to the contrary; that the Applicant's immediate supervisor and the Senior Personnel Manager (SPM) of her department

were supportive of her attaining a higher job grade. Furthermore, the Tribunal observed that the allegation of discriminatory animus was based principally on the Applicant's Annual Performance Reviews (APRs) and Merit-to-Allocation Ratios (MARs), that had allegedly improperly influenced the outcome of the job audit, and the Applicant's theory that management at the time was intent on changing the racial profile of the department The record reflected that CBD had access only to the "job content" section of the APR (a section prepared by the staff member herself) and not to her performance or MAR ratings. In the view of the Tribunal, the Applicant failed to establish a nexus between her allegation of discrimination and the decision of CBD.

The Tribunal also concluded that several additional claims advanced by Applicant were inadmissible for failure to exhaust channels of administrative review. These included an allegation of retaliation for contesting the position reclassification decision through the Fund's dispute resolution system and challenges to her earlier performance ratings and 2005 job audit.

As to Applicant's claim of continuing discrimination, a hostile work environment and career mismanagement, the Tribunal stated that it was willing to assume its admissibility without formally deciding the question of admissibility. The Tribunal concluded that there was nothing on the record that established a pattern of discrimination or the creation of a hostile work environment. The Applicant therefore did not succeed on those claims. In addition, as it had concluded that Applicant's case in relation to the 2007 job reclassification decision must fail, the Tribunal held that "[t]he consequence of that conclusion is that the basis of the Applicant's claim of career mismanagement also falls away." The Tribunal concluded that the Applicant appears to have genuinely felt that she had experienced discrimination; however there was no suggestion that the Applicant had pursued any remedy for the alleged discrimination until she challenged the 2007 position reclassification decision. The Tribunal therefore emphasized that staff share responsibility with the Fund in ensuring a workplace that is free from discrimination.

In conclusion, The Applicant succeeded in asserting her right to challenge the job reclassification decision in this Tribunal, but she did not meet her burden of showing that the Fund abused its discretion in taking that decision. In the view of the Tribunal, the decision to reclassify was not affected by procedural error. Neither was it based on an error of fact or law, nor motivated by discriminatory animus or improper motive. The decision was a reasonable one, taken after the consideration of relevant evidence, by persons trained to apply the job grading criteria. Accordingly, the Applicant's claim was denied.

2. *Judgment No. 2011–2 (14 November 2011): Ms. D. Pyne, Applicant v. International Monetary Fund (IMF), Respondent*[66]

General Administrative Order (GAO) N0.16, section 12—Voluntary separation benefits "Rule of age 50" Pension—Affirmative obligation to assist staff member to find suitable position in cases of reduction in strength, abolition of position or redundancy—Staff members' own conduct in the reassignment process may deprive them of remedy for IMF's Failure to take proactive steps—Differing employment benefits to different categories of staff—"Rational nexus" Test—Duty to offer reassignment assistance to "Volunteers"—Managerial discretion—Management

[66] Catherine M. O'Regan, President, Michel Gentot and Andrés Rigo Sureda, Judges.

MAY REJECT OR DEVIATE FROM THE GRIEVANCE COMMITTEE'S RECOMMENDATION—AWARD OF COSTS

The Applicant, a former staff member, raised claims arising from her voluntary separation from the Fund under the provision of General Administrative Order (GAO) No. 16 relating to a reduction in force and abolition of positions in her department. The Applicant initiated administrative review, challenging the department's failure to find her a suitable position for reassignment. Following her application to the Grievance Committee, IMF's Management declined to accept the Committee's recommendation that it accept the claim in part and compensate accordingly. On 4 May 2011, the Applicant filed her application with the Administrative Tribunal.

The Applicant's first claim was that the IMF had failed to meet the requirements of GAO No. 16, section 12.02. to assist her in seeking reassignment following the abolition of her position. The Tribunal held that it is the Fund's responsibility in the first instance to ascertain if the staff member desires reassignment assistance. This is so, explained the Tribunal, because the text of section 12.02 makes plain that in cases of reduction in strength, abolition of position or the redesign of a position resulting in a redundancy, the Fund "will" assist the affected staff member in seeking another suitable position to which he may be reassigned. In accordance with the text of the GAO, this obligation does not vary because the staff member has volunteered. At the same time, the Tribunal held that once the Fund has discharged its responsibility to inquire, the staff member must in turn apprise the Fund of her interests and preferences. In the view of the Tribunal, the weight of the evidence suggested that while the Fund failed to inquire about the Applicant's intentions, she herself took little initiative to make known to Fund officials any interest she may have had in reassignment.

The Tribunal concluded that the Fund failed to take the requisite initial step of inquiring about the Applicant's interest in potential reassignment. However, in denying the Applicant relief on her reassignment assistance claim, the Tribunal summarized its conclusions as follows:

> "99. The Tribunal has concluded above that the Fund is obliged by GAO No. 16, Section 12.02, to offer reassignment assistance in cases of abolition of position, including those in which the staff member "volunteers" in a reduction in force, without the staff member's having expressly asked for such assistance. That being said, the Applicant in this case gave unmistakable indications that she was making specific preparations to continue her career elsewhere. It is understandable that, in the circumstances, the Fund did not think to reassign her. Moreover, there is no evidence that any suitable position existed to which Applicant might have been reassigned. On the record before it, the Tribunal is unable to conclude that Applicant made an interest in reassignment known at the relevant time to Fund officials. Although Applicant's neglect to do so may be attributable in part to the Fund's failure to inquire about her preferences, on balance, Applicant's own failure to be "diligent in [her] own interests" (*Jakub*, para. 76) precludes relief in this case."

The Tribunal next considered Applicant's second principal claim, that the Fund improperly failed to extend to her the same enhanced separation benefits option relating to access to a "Rule of Age 50" pension with a bridge to retiree medical benefits as was made available to staff members separating under the 2008 Fund-wide downsizing

exercise.[67] The Applicant had been advised that, consistent with the terms of the "Rule of Age 50," she could qualify for that pension option only if she relinquished her SBF leave. She was further informed that the Medical Benefits Plan (MBF) amendment, which would have bridged her to retiree medical coverage, thereby enabling her to choose the "Rule of Age 50" pension, was not available to her because it was a temporary rule applicable only to those staff separating within the terms of the 2008 Fund-wide downsizing framework.

The Applicant claimed, alternatively, that (a) the Fund had "misapplied" the temporary MBP amendment by failing to consider her separation as being taken "in the context of the current downsizing in FY2009-FY2011" or (b) the amendment itself discriminated against staff members separating outside of the context of the Fund-wide downsizing exercise. The Tribunal considered and rejected both arguments.

Although the Applicant's separation took place close in time to the Fund-wide downsizing, the Tribunal recalled that the Applicant's separation was a result of a reduction in force taken in her section, prior to the Fund-wide downsizing. The MBP amendment had emerged solely from concerns relating to the efficacy of the downsizing incentives. Accordingly, the Tribunal concluded that the Applicant's separation took place within the period FY2009-FY2011, that fact of itself did not bring her separation within the terms of the benefits made available to staff separating under the Fund-wide downsizing.

The Tribunal next examined the question of whether the temporary MBP amendment discriminated impermissibly against other staff members including the Applicant. The Tribunal noted that in a series of Judgments it has sustained the allocation of differing employment benefits to different categories of Fund staff where it has found a "rational nexus" between the purpose of the benefit and the category of staff on which the benefit is conferred. Applying the "rational nexus" test, the Tribunal examined the proffered reasons for the MBP amendment and distinction in benefits and assessed whether its allocation to the category of staff separating within the framework of the 2008 Fund-wide downsizing—but not to staff such as Applicant who separated as the result of an earlier departmental reduction in force—was rationally related to those purposes.

The Tribunal concluded that what was clear from the history of the MBP amendment was that it was aimed at identifying the most appropriate mechanism to provide access to medical coverage to those staff under age 50 who were to separate under the Fund-wide downsizing program. Accordingly, it did not consider the position of the Applicant and other staff members who might have volunteered in other initiatives such as a departmental reduction in force. The Tribunal concluded that the Fund's demonstrated need to persuade staff members to participate in the downsizing program meant that differentiation between those who would participate and those who chose to separate voluntarily under other circumstances was not unjustifiable. In the view of the Tribunal, given that the purpose pursued was legitimate, and that the mechanism selected to achieve that purpose was closely tailored to meet that purpose, the failure to consider the position of staff members not affected by the downsizing program did not constitute an error of law.

[67] To provide incentives to voluntary separation as part of the 2008 Fund-wide downsizing, the Fund implemented a series of revisions to its internal law. These included (i) the "Rule of Age 50" pension option, an amendment with continuing effect, and (ii) a temporary amendment to the Medical Benefits Plan (MBP), which was limited to staff separating under the downsizing.

The Tribunal recognized that the Fund's Executive Board could have chosen to make the MBP amendment available to any staff member whose separation date fell within a specified period rather than limiting its availability to staff separating in the context of the current downsizing in FY2009-FY2011 only. That it did not do so, concluded the Tribunal, was supported by evidence and a weighing of policy considerations. In the view of the Tribunal, the temporary MBP amendment was a reasonable exercise of the Executive Board's policy-making discretion which this Tribunal finds no basis to overturn.

Lastly, the Tribunal considered whether the Fund's Management abused its discretion in declining to accept the recommendation of the Grievance Committee to award the Applicant partial attorney's fees for her representation before that Committee, pursuant to GAO No. 31, rev.4, section 7.04. The Tribunal recognized that the Grievance Committee is advisory to the Fund Management, which takes the final decision. Given that Management gave reasons in this case, which cannot be said to be arbitrary or improperly motivated, the Tribunal was unable to sustain the Applicant's complaint that Management abused its discretion in denying to reimburse her as recommended by the Grievance Committee.

The Tribunal concluded that it was not appropriate to award any costs to the Applicant because she hds not had significant success on the legal submissions made to the Tribunal. Accordingly, the Applicant's claim was denied.

Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS*

A. Legal opinions of the Secretariat of the United Nations

(Issued or prepared by the Office of Legal Affairs)

1. Privileges and immunities

(*a*) Note to the Permanent Representative of [State] concerning the non-reimbursement of certain amounts of Value-Added Tax paid by the United Nations Development Programme (UNDP)

Value-Added Taxes deemed to be indirect taxes within meaning of Section 8 of the Convention on the Privileges and Immunities of the United Nations, 1946** — Principle of remission or return — UNDP entitled to reimbursement of VAT on services and rent related to its premises as both payments are significant and recurrent

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 exchanges between the Resident Representative a.i. of the United Nations Development Programme (UNDP) in [State] (hereinafter – the "Resident Representative") and the Legal Advisor of the Ministry of Foreign Affairs of [State] (hereinafter – the "Legal Advisor") on the issue of non-reimbursement of certain amounts of Value-added Tax (hereinafter – "VAT") paid by UNDP. The Legal Counsel understands that the Resident Representative conveyed the letter to the Legal Advisor on [date] seeking his assistance in defining a clear returning tax mechanism and requesting him most urgently to facilitate the reimbursement of VAT on services and rent of the new premises of UNDP. The Legal Advisor informed the Office of UNDP by the Note Verbale of [date] that a new policy had been adopted to limit specific terms of VAT reimbursement due to several requests from international organizations to reimburse expenses not directly related to their mandated activities. It was also mentioned that laws and regulations of [State] clearly specify when the organization in question has a right to reimburse VAT. (Copies of the letter and Note Verbale are attached hereby.)***

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* This chapter contains legal opinions and other similar legal memoranda and documents.

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

*** Not reproduced herein.

The Legal Counsel would like to clarify the legal position of the United Nations in this regard.

The status of UNDP as a part of the United Nations is regulated by the Convention on the Privileges and Immunities of the United Nations, 1946 (hereinafter – "the Convention"), acceded to by [State] on [date], without relevant reservation about the tax provisions contained in the Convention, as well as by the 1961 Agreement concerning Assistance from the Special Fund (hereinafter – "the Agreement").

In United Nations practice, value-added taxes are deemed to be indirect taxes within the meaning of section 8 of the Convention. While section 8 does not provide for an explicit exemption from such taxes, it does provide that "when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax".

The principle of remission or return of the amount of duty or tax which has been charged or is chargeable on important purchases of goods and services by the Organization, its funds and programmes has become a regular element in the customary practice of the States Parties to the Convention. The question whether particular purchases are "important" within the meaning of section 8 of the Convention has consistently been determined by reference either to purchases made on a recurring basis, or which involve considerable quantities of goods, commodities or materials.

Accordingly, UNDP is entitled to the reimbursement of VAT on the services and rent related to its premises, since these payments are both significant and recurrent in nature. There can be no doubt as to the relevance of these payments to the mandated activities of UNDP in [State]. The same applies to any VAT paid by UNDP on other important purchases of goods and services in connection with its operations in the country.

The Legal Counsel reiterates that the United Nations attaches special importance to the principle of remission or return as reflected in section 8 of the Convention because it is designed to protect the assets of the Organization from such taxes, which incidence would be specifically heavy, and would constitute an undue burden on it and to equalize the procurement costs of the Organization throughout the world and the consequent charges upon Member States.

Under section 34 of the Convention, the Government of [State] has an obligation to be "in a position under its own law to give effect to the terms of this Convention." Moreover, any interpretation of the provisions of the Convention on the Privileges and Immunities of the United Nations must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. Measures which might, *inter alia*, increase the financial or other burdens of the Organization have to be viewed as being inconsistent with this provision.

The Legal Counsel also notes that the aforementioned provisions of the Convention should in the case of UNDP be interpreted with due regard to the Agreement, and in particular its article VIII (4), which provides that "[t]he Government shall take any measures which may be necessary to exempt the Special Fund. . . . from regulations or other legal provisions which may interfere with operations under this Agreement".

In light of the above the Legal Counsel kindly requests the Permanent Representative of [State] to the United Nations to urge the competent national authorities to reimburse UNDP with respect to its payment of VAT in [State] and to set forth a clear mechanism for the return of such taxes in respect of future important purchases.

[. . .]

15 February 2011

(*b*) Note to [Under-Secretary-General of the Department of Political Affairs] concerning [United Nations Mission] sharing lists of national staff with [State]

Sharing, with a State, lists of staff members who were recruited locally in that State and who are working with a United Nations mission or with offices, programmes or funds of the United Nations that are present in the State—Articles V and VII of the Convention on the Privileges and Immunities of the United Nations, 1946* ("General Convention")—A State hosting a United Nations presence may request a full list of names of all officials of the United Nations, within the meaning of articles V and VII of the General Convention, who are serving with that field presence—Secretary-General is duty-bound to provide such a list and will determine how often such list is published—Contents of the list includes the names of staff members and other information such that the staff members may be identified by the host country—Secretary-General may impose reasonable conditions on the dissemination and use of such information to avoid endangering the safety or security of the Organization's personnel or prejudicing the security or proper conduct of its operations

1. The purpose of this Note is to provide you with legal advice, further to your Note dated [. . .], regarding the sharing with [State] of lists of staff members who have been recruited locally in [State] and who are working with [United Nations Mission] or with offices, programmes or funds of the United Nations that are present in [State].

Sharing

2. [State] is party to the Convention on the Privileges and Immunities of the United Nations, 1946 (the "General Convention"). In accordance with article V, section 17, of the General Convention, the Secretary-General is to specify the categories of officials to which the provisions of that article and article VII apply. Further to that stipulation, the Secretary-General submitted a list of such categories to the General Assembly at its First Session. The General Assembly, by its resolution 76 (I) of 7 December 1946, proceeded to approve the granting of privileges and immunities referred to in articles V and VII "to all members of the staff of the United Nations, with the exception of those recruited locally and assigned to hourly rates". With the exception of those assigned to hourly rates of pay, staff members who are recruited locally therefore fall within the categories of officials to which the provisions of articles V and VII apply.

3. Article V, section 17, of the General Convention goes on to provide that "[t]he names of the officials included in these categories shall from time to time be made known

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

to the Governments of Members". Further to that stipulation, the Secretary-General transmits each year the List of the Staff of the United Nations Secretariat to the Governments of Member States, through their Permanent Missions in New York. However, that document includes only staff members who hold appointments of one year or more. It therefore does not include the names of many staff members who fall within the categories to which articles V and VII of the General Convention apply, in particular those who are recruited locally by the Organization's field presences.

4. This being so, a State hosting a United Nations presence may properly request that it be provided from time to time with a full list of the names of all officials of the United Nations, within the meaning of articles V and VII of the General Convention, who are serving with that field presence. In view of the clear stipulation in the concluding sentence of article V, section 17, of the General Convention, the Secretary-General is duty-bound to provide such a list. *A fortiori*, that State can request a list of all officials serving with the field presence who are recruited locally. It falls to the Secretary-General, in the light of administrative considerations, to decide how often such a list is provided.

5. As for the contents of that list, it should certainly include the names of the officials concerned. Further, in view of the evident purpose of article V, section 17, of the General Convention, it should also include such other information as might be required to make it possible for the host-country authorities to identify those officials. The practice of the Organization in this regard shows that it has accordingly provided information on the nationalities of such officials, the date of their recruitment and their social security number. Subject to administrative considerations, there would be no legal objection to also providing information on their date of birth.

6. This advice is in line with advice that this Office has given in respect of similar requests that have been received from Member States hosting the Organization's field presences.

7. Finally, it should be noted in respect of [United Nations Mission] that the conclusion and entry-into-force of the status-of-mission agreement (SOMA) will not affect the advice set out above, in as much as article II, First, of the United Nations draft of [date] confirms that the General Convention applies in respect of [United Nations Mission].

How to share

8. The Organization should only respond to a request for a list of its officials serving in a given country if it is communicated to it through the appropriate channels—typically, its Ministry of Foreign Affairs.

9. While the Secretary-General may be required to provide the Government of a Member State from time to time with the names of officials serving in that State, there is nothing in article V, section 17, of the General Convention that precludes the Secretary-General from imposing reasonable conditions on the dissemination and use of the information so provided if and to the extent that this may be necessary to avoid endangering the safety or security of the Organization's personnel or prejudicing the security or proper conduct of its operations. We note in this regard that the List of the Staff of the United Nations Secretariat is issued as a "restricted" document and is not made publicly available.

10. We understand from [United Nations Mission]'s Code Cable [N°.] of [date] that there may be concerns for the security of the Organization's locally recruited staff members if their identities were to become known to certain actors in [State]. We are not in a position to assess this risk, nor to judge what conditions might be imposed on the dissemination and use of the information being sought by the Government that would be best calculated to prevent this risk from being realized. However, we would suggest that, as a minimum, the Organization might stipulate that the identities of locally recruited staff members are not to be made public and that they are to be disseminated within the Government on a strictly "need to know" basis only.

7 October 2011

2. Procedural and institutional issues

(*a*) Note to the Assistant Secretary-General of the Office of Legal Affairs, concerning a claim by International Criminal Tribunal for Rwanda (ICTR) Defence Counsel for payment of fees for legal services rendered

Claim for payment of legal services rendered by ICTR defence counsel—Modes of dispute settlement—Arbitration not included as mode of dispute settlement in ICTR directive on the assignment of defence counsel or ICTR Statute* for disputes relating to remuneration or reimbursement of expenses—ICTR has discretion on how to proceed with claim—Resort to arbitration likely to require approval from General Assembly

1. This is in reference to [. . .] a letter, dated 25 January 2011, from [name], a Defence Counsel for the ICTR, addressed to the Legal Counsel and the ICTR Registrar regarding the above-referenced claim [. . .].

2. In her letter, [Defence Counsel] claims that she is owed [US$ amount] for services rendered in connection with the case of *The Prosecutor* v. [*name of the Accused*] and proposes that the United Nations or the ICTR: (i) pay the claimed amount; (ii) negotiate a settlement; or (iii) submit the matter to arbitration.

3. In this context, we have reviewed:

(i) the ICTR Directive on the Assignment of Defence Counsel ("Directive");

(ii) the ICTR Statute;

(iii) a letter, dated 15 May 2008, from the ICTR to [Defence Counsel] entitled "Offer of Assignment as Counsel for the Accused [name of the Accused]"; and

(iv) a letter, dated 13 October 2008, from the ICTR to [Defence Counsel] entitled "Your assignment as Defence Counsel to Represent the Accused [*name of the Accused*]."

4. Under Article 30 ("Settlement of Disputes") of the Directive, disputes relating to remuneration or to the reimbursement of expenses of the Defence Counsel are to be

* The Statute of the International Criminal Tribunal for Rwanda 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), 1878 (2009) and 1932 (2010).

resolved by the Registrar "after consulting with the President and, if necessary, the Advisory Panel, on an equitable basis." *The Directive does not include arbitration as a mode of dispute settlement for disputes of this nature. Similarly, neither the ICTR Statute nor the above-referenced offer letter and the assignment letter contain any reference to arbitration as a dispute settlement mechanism for disputes of this nature.* [emphasis in original] We understand that, in handling [Defence Counsel]'s claim, the ICTR has followed the procedures set forth in the Directive. Thus, it would appear that [Defence Counsel] has exhausted the appropriate recourses available pursuant to the relevant terms and conditions of her engagement as Defence Counsel appointed by the ICTR to represent [name of the Accused] in the case of *The Prosecutor* v. [*name of the Accused*].

5. In view of the foregoing, in particular, that all prescribed procedures for dealing with this type of claims have been followed, a decision on how to proceed with [Defence Counsel]'s claim, including her suggestion that the matter be submitted to arbitration, is a policy decision for the ICTR to take. If the ICTR decides to refer the dispute to arbitration, given the potentially far reaching implications of such decision, including possible financial ramifications, the ICTR would most likely need to seek the General Assembly's approval to do so. In addition, if the ICTR decides to permit arbitration as a dispute settlement mechanism for disputes of this nature, the Directive would need to be amended, pursuant to the procedures set forth in Article 32 ("Amendment of the Directive") of the Directive, in order to provide for this change.

6. If and when the ICTR decides, as a matter of policy, to submit disputes of this nature to arbitration and the ICTR obtains appropriate approvals from the General Assembly, [the Office of Legal Affairs] would be happy to assist with any resulting arbitration proceedings, including those relating to the current dispute with [Defence Counsel]. At this stage, it seems advisable to defer to ICTR's decision on the Defense Counsel's request.

10 February 2011

(*b*) Interoffice memorandum to the Assistant Secretary-General for Political Affairs, concerning a request for declassification of documentation

Request for declassification of confidential archival documentation—Review required for declassification of documents less than 20 years old—Intellectual property rights—Potential impact on ongoing international criminal trials—Expectations of confidentiality of outside sources—Permission required for individual to donate United Nations archives to university

1. I refer to your Note, dated [date], attaching a CD-ROM containing voluminous documentation (the "Documents") and requesting guidance from the Office of Legal Affairs (OLA) on a declassification request, with respect to such Documents. I also refer to the various consultations held between representatives of the Department of Political Affairs (DPA) and OLA with respect to this matter.

Background

2. We understand that on [date], the Archives and Records Management Section ("ARMS") received a request for access to archives concerning the Vance-Owen Peace Plan of 1992–93 from [Requester], [title] from 1992 to 1995. We also understand that on

[date], [Requester] reviewed the [subject matter] stored at the United Nations Office at Geneva (UNOG) and is now requesting copies of the Documents. [Requester] has explicitly expressed his intention to publish a book in part based on United Nations archives concerning the Vance-Owen Peace Plan and to subsequently donate his archives to [University]. In its memorandum to DPA, dated [date] (the "ARMS memorandum"[1]), ARMS stated as follows:

> "According to current archives rules, when an individual intends to reproduce, either in whole or in part, archival documents for publication, declassification is necessary to make the documents available to the public. Therefore ARMS is initiating a declassification request and has developed the attached declassification sheet."

3. In order to reach a decision on the declassification request, you have confirmed that DPA has reviewed the Documents. However, bearing in mind potential implications for intellectual property rights as well as the sensitive and confidential nature of some of the issues in connection with the ongoing trial of [Accused] and others at The Hague, you have sought OLA's guidance on the declassification request.

Analysis

4. The Documents in question are less than twenty (20) years old and were classified as "confidential", according to the declassification sheet that was attached to the ARMS memorandum. Pursuant to the Secretary-General's bulletin, entitled "Information sensitivity, classification and handling", dated 12 February 2007 (ST/SGB/2007/6), paragraph 4.3 (b), documents shall be declassified automatically by ARMS when 20 years old. Since the Documents are less than twenty (20) years old and are, therefore, not due for automatic declassification, it is a matter for DPA to review them prior to the time for automatic declassification. The purpose of such review would be to ascertain that any declassification and subsequent disclosure of such Documents would not, *inter alia*: (i) endanger the safety or security of any individual; (ii) violate a duty of confidentiality owed by the United Nations to a third party; (iii) endanger the security of Member States or prejudice the security or proper conduct of any operation or activity of the United Nations, including any of its peacekeeping operations; or (iv) undermine the Organization's free and independent decision-making process.[2]

5. When undertaking its review, DPA should also bear in mind that in accordance with paragraph 4.4 of ST/SGB/2007/6, when declassifying information received from an outside source, the United Nations shall give due regard to the expectations of confidentiality of that outside source and, if appropriate, seek the prior consent of the outside source. Should DPA determine that any of the Documents have been received by the United Nations from an outside source, OLA would be happy to review the terms of consent that may have been provided to DPA by such outside source(s) prior to declassification of the relevant Document(s).

Conclusion

6. Although it is not possible for OLA to know if the Documents relate to, or would affect, the ongoing trials at the International Criminal Tribunal for the former Yugoslavia,

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[1] The ARMS memorandum was attached to DPA's Note, dated [date]. [Not reproduced herein.]

[2] See paragraph 1.2 of ST/SGB/2007/6.

including the trial of [Accused], we note that DPA's review should be carried out and a declassification decision made on the basis of the guidelines set forth in ST/SGB/2007/6, using DPA's own assessment. Additionally, the Office of the Registrar of the International Criminal Tribunal for the former Yugoslavia could be consulted in this regard.

7. On a separate matter, paragraph 3 of the ARMS memorandum provides in relevant part that, "[Requester] explicitly expresse[d] his intention to publish a book based on documents surrounding the Vance-Owen Peace Plan and to subsequently donate his archives to [University] . . ." In this connection, we note that such donation can only be made with respect to archives either owned by [Requester] or, if not owned by [Requester], for which he has obtained the appropriate permissions from the owner(s) to make such donation. Should the Organization decide to grant any such permission to [Requester] in relation to these Documents, OLA would be happy to review the terms of such grant, if you wish.

18 March 2011

(*c*) Interoffice memorandum to the Under-Secretary-General, Special Adviser on Africa, High Representative, and the Secretary-General of the Fourth United Nations Conference on the Least Developed Countries concerning the Credentials of the delegation representing [State] at the Fourth United Nations Conference on Least Developed Countries

United Nations Conferences take their own decisions on credentials—Decisions of General Assembly on credentials provide authoritative guidance—Credentials Committee to make recommendation to the Conference concerning credentials of representatives—Should a Member State object to the participation of [State] at the Conference on the basis of [State]'s credentials, the President of the Conference is obligated to refer the matter to the Credentials Committee—Credentials Committee must report back to Conference for rendering a decision—until such time as the decision is rendered, representatives of [State] may continue to participate provisionally with the same rights and privileges as all other participating States

1. This is with reference to your memorandum of [date], concerning the participation of the delegation representing [State] at the Fourth United Nations Conference on Least Developed Countries (the "Conference"). The Conference is scheduled to take place in Istanbul, Turkey, from 9 to 13 May 2011.

2. You note that in previous General Assembly meetings, some Member States have raised objections to the participation of the delegation representing [State] due to political sanctions imposed by the [Entity] countries. You seek our advice concerning possible scenarios should a Member State raise objections to the participation of [State] during the Conference and the options available in responding to such objections.

3. The General Assembly, in its resolution 63/227 of 19 December 2008, decided to convene the Conference, and, in its resolution 65/171 of 20 December 2010, accepted the offer of Turkey to host the Conference. As with the previous Conferences on the Least Developed Countries, the present Conference is open to participation by representatives of States Members of the United Nations as reflected in the Information Note for participants prepared by the Secretariat (A/CONF.219/INF/1).

4. The Conference will adopt its own rules of procedure, a draft of which is set out in A/CONF.219/IPC/L.2 (the "draft rules"). Pursuant to the draft rules, all States participating in the Conference are required to submit the credentials of their representatives (draft rule 3). The credentials are reviewed by a Credentials Committee. It is up to the Conference to decide whom to appoint as Members of the Credentials Committee (draft rule 4). However, as a rule, the Conference, upon the proposal of the President, appoints the same Member States that are members of the Credentials Committee for the sixty-fifth session of the General Assembly, i.e. [list of States] (draft rule 4).

5. United Nations Conferences take their own decisions on credentials. However, decisions of the General Assembly on credentials provide authoritative guidance. Thus, while the Credentials Committee for the sixty-fourth session of the General Assembly decided to defer consideration of [State]'s credentials which allowed [State] to continue to participate provisionally in the Assembly's activities for that session, the Credentials Committee for the sixty-fifth session recommended in their report to the General Assembly (A/65/583/Rev.1) that the credentials of [State] be accepted. The General Assembly approved the report of the Credentials Committee by resolution 65/237 of 23 December 2010.

6. Thus, should the question of [State]'s participation be raised at the Conference we would recommend that you recall that the General Assembly has accepted [State]'s credentials for its sixty-fifth session and that it is the practice of United Nations Conferences to follow the guidance of the General Assembly on decisions relating to credentials.

7. Furthermore, under the draft rules of the Conference, representatives of States are entitled to participate provisionally pending a decision of the Conference on their credentials (draft rule 5).

8. Should any Member State take the floor at any stage during the Conference to object to the participation of the representatives from [State], then the President of the Conference has to clarify whether it is a political statement condemning the Government of [State] or whether the Member State is proposing that the credentials of the representatives of [State] not be accepted. In the case of the former, i.e. a political statement, no formal action on the part of the Conference is required from a legal point of view. If the latter is the case, then the President of the Conference is under an obligation to refer the matter immediately to the Credentials Committee which can convene on an urgent basis in order to review the matter and report back to the Conference, so that the Conference can render its decision. Until such time as the Conference has rendered its decision, representatives of [State] continue to participate provisionally with the same rights and privileges as all other participating States.

9. Ultimately, it is for the Credentials Committee to make a recommendation to the Conference concerning the credentials of representatives. In this regard, we envisage three possible scenarios with regard to [State]:

- The Committee could recommend to the Conference that [State]'s credentials be accepted.

- The Committee could defer its consideration of [State]'s credentials and accept the credentials of the remaining States as was done at the sixty-fourth session of the General Assembly. If this recommendation is accepted by the Conference then [State] would continue to participate provisionally in the Conference's activities. As no decision would

have been taken on [State]'s credentials, any Member State could challenge its participation again which would require a further meeting of the Committee.

• The Committee could recommend to the Conference that it reject the credentials of [State]. If accepted by the Conference, then representatives of [State] would be barred from continuing to participate formally in the Conference's activities. Thus, they would not be able to make statements, circulate documents or exercise their right to vote. However, such a decision of the Conference would in no way affect [State]'s participation in the sixty-fifth session of the General Assembly.

[. . .]

15 April 2011

(*d*) Interoffice memorandum to the Director, Legal Support Office, Bureau of Management (BOM), United Nations Development Programme (UNDP), concerning request by [Fund] to access UNDP audit and investigation work and records

Request for audit and investigation work and records—Compatibility with practices governing audit practices—Uniform application of single audit principle, as legislated by General Assembly, is non-discretionary

1. I refer to an e-mail message of [date] from [name] of the Legal Support Office, BOM, UNDP, on the above matter. [Name]'s e-mail notes that the [Fund], an entity which provides significant funding to UNDP, has recently sought increased access to UNDP information, documentation and personnel. In particular, we understand from two communications attached to [name]'s e-mail, and dated [date] and [date] 2011 respectively, that the [Fund], through its Office of the Inspector General (OIG), has requested the following:

(i) copies of the internal audit reports with the confidentiality condition lifted;

(ii) full and unrestricted access to the UNDP Office of Audit and Investigations (OAI) working papers;

(iii) involvement in the planning phase of OAI audits and investigations with a view to ensuring that the terms of reference and the planning, coverage and staffing are adequate; and

(iv) access to UNDP books, records and staff in any case in which fraud, financial abuse, misappropriation or irregularity is identified.

In particular, the OIG has explained, in its [date] 2011 letter, that it seeks such access in order to fulfill its mandate to "audit *all* [Fund] supported programmes, including those managed by UNDP" (emphasis in original). UNDP seeks OLA's opinion as to the compatibility of the [Fund]'s requests with the practices governing the audit of UNDP operations, in particular, the single audit principle.

2. We note at the outset that the relationship between UNDP and the [Fund] is governed by the provisions of the framework grant agreement agreed to between UNDP and the [Fund], a copy of which has been provided to this Office. Article 7-b of the Standard Terms and Conditions constituting part of such agreement provides that programme

expenditures relating to funding provided by the [Fund] are to be audited in accordance with UNDP's internal and external auditing practices.

3. In this regard, we note that UNDP's auditing practices, which as discussed above, govern the audit of its [Fund] supported projects, are set out under the UNDP Financial Regulations and Rules. In particular, Chapter B, Article 4 of UNDP Financial Regulations and Rules references, and makes directly applicable to UNDP, the provisions of Article VII of United Nations Financial Regulations and Rules, including its Regulation 7.6 which provides that "the Board of Auditors shall be completely independent and solely responsible for the audit". This principle of single audit as set out in Regulation 7.6 has also been reaffirmed by the General Assembly including in its resolution 59/272, which underscored the principle that any external review, audit, inspection, monitoring, evaluation or investigation can only be conducted by bodies mandated by the General Assembly. We would further note that, as the single audit principle has been legislated by the General Assembly, its uniform application is non-discretionary, and the Secretary-General does not have the authority to make an exception with respect to any particular request.

4. The single audit principle, as described above, has not, in the past, prevented the Organization from providing financial or other information to third parties, including donors for United Nations projects, upon request. However, the provision of such information by the Organization requires, at a minimum, a determination that the request was made for non-audit purposes.

5. In the current case, this requirement has not been met. Indeed, as indicated clearly in the [date] and [date] 2011 letters from its OIG, the [Fund] is seeking information, documentation and access for audit purposes. As such, the provision of the information, documentation and the access sought by the [Fund] would be inconsistent with the principle of single audit. Therefore, it would not be appropriate for UNDP to accede to such request.

18 April 2011

(*e*) Interoffice memorandum to the Chief, *a.i.*, Office of Operations, United Nations Environment Programme (UNEP), concerning the Global Partnership for Sustainable Tourism ("GPST")

Determination whether association of public and private actors chaired by the government of France can be considered a project within UNEP or is an independent external entity—UNEP project may only be overseen by UNEP, not a body consisting of external entities—Association of public and private actors is not a UNEP project or partnership—Need to revise the working procedures of the association

1. I refer to your e-mail message of [date], requesting advice from the Office of Legal Affairs (OLA) on the status of the GPST, in particular whether it can be considered a project within UNEP or whether it is an independent external body. I also refer to [. . .] additional background information on the GPST [provided to us, including] a copy of a draft OIOS Evaluation Report, entitled, "Thematic evaluation of the United Nations Secretariat business partnerships addressing climate change," dated 20 May 2010, which mentions a project known as the Sustainable Buildings and Climate Initiative ("SBCI"). In the draft report, the SBCI is referred to as a "[p]latform for cooperation between UNEP and build-

ing sector stakeholders to improve the sustainability and reduce the climate footprint of buildings" (see page. . .). [It was] explained to us that the SBCI serves as a model for the GPST. Please find below our views on the status of the GPST.

GPST

2. Based on the documentation and information that was provided [to us] and [that] on the websites of UNEP and the United Nations Department of Economic and Social Affairs (DESA), we understand that the GPST arose from the 6th Meeting of the International Task Force on Sustainable Tourism Development ("ITF-STD"). The ITF-STD is one of the task forces created under the Marrakech Process which is "a global process to support the elaboration of a 10-Year Framework of Programs (10YFP) on sustainable consumption and production [SCP], as called for by the [World Summit on Sustainable Development] Johannesburg Plan of Action" (see the DESA website, located at http://esa.un.org/marralcechprocess/). The Marrakech Task Forces are "voluntary initiatives led by governments, which -in cooperation with various other partners from the North and the South- commit themselves to carrying out a set of concrete activities at a national or regional level that promote a shift to SCP patterns." (See http://esa.un.org/maiTalcechprocess/taskforces.shtml).

3. You have indicated that at the 6th meeting of the ITF-STD, the ITF-STD members voiced consensus that the ITF-STD should continue to function as a "UN Type II Commission on Sustainable Development Partnership—The Global Partnership for Sustainable Tourism (GPST) with UNEP hosting its Secretariat." For the past three years, UNEP has been hosting the Secretariat for the ITF-STD, chaired by the Government of France, and we understand that the Government of France intends to also be the Chair of the GPST. We understand that the GPST is intended to be the leading international tourism partnership uniting the private sector, Governments, academia, and NGOs to enhance sustainability within the tourism sector. Membership in the GPST will be open to Governments, multilateral bodies, UN System organizations, NGOs and "other tourism stakeholders", which we understand to mean the private sector, e.g., business associations. Although it is not clear to us what is meant in the present context, paragraph 4.3 of the draft Working Procedures of the GPST, dated 30 December 2010 (hereinafter, the "Working Procedures") states that members of the GPST "shall be considered as having the legal status of an independent contractor."

4. According to the Working Procedures, GPST will not have an independent legal status (see Section II on "Form of organization and place of business"). However, the structure of the GPST set forth in the Working Procedures suggests that it resembles that of an independent legal entity. For example, in addition to the Secretariat and a steering committee (described further below), the GPST will have an annual Assembly of members of the GPST (referred to as the "General Assembly" in the Working Procedures) whereby the five-year strategic plan, an annual Programme of Work and the budget of the GPST will be approved. The budget "will be administered by the Secretariat [i.e., UNEP] under the supervision of the Steering Committee and in accordance with the UN/UNEP Financial Regulations and Rules" (see Section V, paragraph 5.3 of the Working Procedures). The Assembly of GPST members will also oversee the GPST management and the electing of members of the steering committee (see *ibid.).* The members shall have one vote at the

annual and extraordinary general meetings of the GPST (see paragraph 5.4 of the Working Procedures).

5. The steering committee of the GPST, which will consist of nine voting members, will be its executive body (see paragraph 5.14 of the Working Procedures). One of the functions of such steering committee will be "to oversee the activities and projects implemented by the Secretariat" (see *ibid).* This would result in an external body overseeing work performed by UNEP, which serves as the Secretariat of the GPST. This is further elaborated in paragraph 5.21, which describes the functions of the GPST Secretariat as follows: "[w]ithin the scope of UN/UNEP's regulations, rules and standard business practices and under the guidance and supervision of the GPST Steering Committee, and the advice on thematic areas of the Advisory Committee, the Secretariat will manage the daily operations of GPST activities according to the annual programme of work . . .".

6. Section VI of the Working Procedures, entitled "Financing and Fundraising", provides that "GPST shall be administered in accordance with UN/UNEP Financial Regulations and Rules", and that "[t]he GPST will be supported by direct financial support from the members of the GPST, who will share its management costs in accordance with an established scale of contributions [and that] GPST members will also be mobilized for the (co) financing of the projects identified by GPST" (see paragraphs 6.3 and 6.8). It appears, therefore, that the GPST members will be required to pay membership fees or similar charges. Furthermore, there will fundraising by the steering committee and the GPST Secretariat since paragraph 6.13 provides that "[f]undraising will be a primary function of the Steering Committee, with support from the Secretariat, which will prepare the fundraising strategy . . .".

Advice

7. From the information provided to us as described above, we understand that the GPST, which is a "continuation" of the International Task Force on Sustainable Tourism Development (ITF-STD), is an association of public and private actors chaired by the Government of France, comprising various stakeholders, including Governments, United Nations System organizations, NGOs and tourism business associations as members. The activities of the GPST and projects implemented by the GPST Secretariat would be overseen by the steering committee, the executive body of the GPST consisting of nine voting members of the GPST. In addition, the Assembly of GPST members would oversee the management of the GPST, and would approve the five-year strategic plan, an annual Programme of Work and the budget.

8. We note that a UNEP project and activities thereunder must be overseen by UNEP, and not by a body (e.g., a steering committee) consisting of external entities. Similarly, the management of a UNEP project must also be overseen by UNEP, and not by a body (e.g., an Assembly of GPST members) consisting of external entities. Also, if a UNEP project were to have a chair, UNEP would chair the project, and not the Government of a Member State. Therefore, while UNEP currently hosts the GPST Secretariat (which we understand is at the request the ITF-STD members), we concur with your Office's view that the GPST as an association of public and private actors is not a UNEP partnership or project.

9. In view of the above, it is not appropriate to refer to the GPST as a UNEP project. Significant changes would have to be made to the structure of the GPST in order for it to

conform to the structure of UNEP projects. This would require the consent of the various stakeholders that comprise the GPST. Moreover, approval or consent of the UNEP Governing Council would be required to consider the GPST as a UNEP project. Therefore, as you indicated in your e-mail message, UNEP may wish to consider consulting the Governing Council of UNEP concerning the GPST and UNEP's role therein.

10. In addition, while the establishment of an *ad hoc* secretariat within UNEP to discharge UNEP's functions in the GPST as its secretariat would not necessarily be objectionable from a legal point of view, if the GPST secretariat is intended to be a standing secretariat for the GPST, in order for it to be established within the administrative structure of the UNEP Secretariat, the Governing Council's approval or endorsement would be necessary.

11. In light of the views set forth above, we consider that the wording of paragraph 6.3 of the Working Procedures providing that the "GPST shall be administered in accordance with UN/UNEP Financial Regulations and Rules" is not accurate. Since paragraph 6.3 is placed within Section IV on "Financing and Fundraising", we recommend that paragraph 6.3 be revised to state that "[t]he financial administration of the GPST shall be in accordance with the UN Financial Regulations and Rules and the Financial Rules of the Fund of the United Nations Environment Programme". We consider that the revised wording would be consistent with the revised wording of paragraph 5.12 of the Working Procedures which we understand was proposed by UNEP at the first annual Assembly of the members of the GPST. The revised paragraph 5.12 reads as follows:

> "Considering that the GPST Secretariat is hosted by a United Nations entity, the GPST Secretariat hosting UN entity (UNEP) will ensure that decisions on the financial administration, and legal issues are in accordance with UN/UNEP regulations and rules, and will have veto rights when these are not met."

It is, however, not clear whether the above revision was agreed to by the Assembly of the members of the GPST.

12. Under paragraph 6.13 of the Working Procedures, carrying out fundraising activities for the GPST would be a primary function of the steering committee of the GPST, "with support from the Secretariat, which will prepare the fundraising strategy." We wish to raise the question of whether there is a legislative mandate for UNEP, in its role as host of the GPST Secretariat, to engage in fundraising in support of the GPST and to prepare the fundraising strategy. We recommend that appropriate finance officer(s) for UNEP be consulted with respect to the issue of fund-raising by UNEP in support of the GPST.

13. With respect to the draft Office of Internal Oversight Services (OIOS) report referred to in paragraph 1 above, please note that the fact that the Sustainable Buildings and Climate Initiative (SBCI) is mentioned in the report does not appear to confirm the status of the SBCI as a UNEP project. In this regard, the OIOS report also refers to the UNEP Finance Initiative. OLA stated in a memorandum of [2005] to UNEP that the UNEP Finance Initiative is an initiative of insurance/finance institutions. Therefore, we advised that the Governing Council of UNEP be consulted concerning the status of the UNEP Finance Initiative vis-à-vis UNEP and the role of UNEP therein, including the use of the UNEP name in the Initiative. In view of the foregoing, the fact that the GPST is modelled after the SBCI does not appear to confirm the status of GPST as a UN or UNEP project.

26 April 2011

(*f*) Note to the Assistant Secretary-General of the Department for General Assembly and Conference Management (DGACM), concerning, a request for documents by Defence Counsel for [accused]

Request to the United Nations for documents from defence counsel of [accused] on trial at the International Criminal Tribunal for Rwanda—United Nations policy of maximum cooperation with the international tribunals—Disclosure criteria—No need to review public documents

1. I am forwarding a request for documents, received by my Office on [date], from the Defence Counsel for [accused], a former [official title] of [State] who is on trial at the International Criminal Tribunal for Rwanda.

2. The United Nations pursues a policy of maximum cooperation with the international tribunals, including with Defence Counsel appearing before them. Accordingly, I would be grateful if the Department for General Assembly and Conference Management, with the assistance of the Archives and Records Management Section, would retrieve the documents in category A and the speech of the former [official title] of [State] referred to in category B in the attached letter dated [. . .]*. We are seeking the rest of the documents from the Department of Peacekeeping Operations.

3. Since the relevant documents appear to be public, there is no need to review them to ascertain that their disclosure would not:

(*a*) violate a duty of confidentiality that the United Nations owes to a third party;

(*b*) endanger the safety or security of any individual;

(*c*) endanger the security of Member States or prejudice the security or proper conduct of any operation or activity of the United Nations, including any of its peacekeeping operations; or

(*d*) undermine the Organization's free and independent decision-making process.

4. I would appreciate it if this request were addressed urgently, as the case is scheduled to resume on [date].

16 May 2011

(*g*) Memorandum to the Chief of Financial Resources Management Service, United Nations Office at Geneva, concerning outstanding debts of the Socialist Federal Republic of Yugoslavia in respect of disarmament and other conferences administered in Geneva

Liability of successor States of the Socialist Federal Republic of Yugoslavia for payment of outstanding debts owed to the United Nations relating to disarmament and human rights conference servicing—Distinction between debts outstanding to the charge of the Socialist Federal Republic of Yugoslavia at the date of its dissolution and debts that arose subsequently and were outstanding to its charge—Apportionment of debts

* Not reproduced herein.

1. The purpose of this memorandum is to provide you with advice, further to your memorandum of [date] to [Chief, Treaty Section of the Office of Legal Affairs], on the liability of the successor States of the Socialist Federal Republic of Yugoslavia for the payment of certain outstanding debts owed to the United Nations by the former Yugoslavia relating to the servicing by the United Nations of various conferences and meetings in the field of disarmament and human rights—the Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 1968;* the Third Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972;** the First Session of the Ad Hoc Group of Governmental Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint (VEREX I); and the Fifth and Sixth Financial Periods of the States Parties of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.***

2. On 24 December 2008, the General Assembly adopted its resolution 63/249 concerning the unpaid assessed contributions of the former Yugoslavia. A copy of that resolution is attached for your ease of reference.**** By its terms, that resolution relates to liability for the payment of debts owed to the United Nations by the former Yugoslavia pursuant to Article 17, paragraph 2, of the Charter of the United Nations. It does not as such apply to other debts owed to the Organization by the former Yugoslavia, such as those that are the subject of your memorandum. This is made clear in operative paragraph 4 of that resolution. Nevertheless, it would be our view that the Secretariat should be guided by that resolution in addressing questions of liability for other debts owing to the United Nations, in the absence of any existing decision specifically relating to the particular debt in question.

3. Consistent with the approach taken in operative paragraph 2 of General Assembly resolution 63/249, a distinction should be made between, on the one hand, those debts that were outstanding to the charge of the former Yugoslavia at the date of the dissolution of the Socialist Federal Republic of Yugoslavia on 27 April 1992 and, on the other hand, the debts that arose subsequently to that date and were outstanding to the charge of the former Yugoslavia.

4. With respect to the former, we would advise, from a legal point of view, that you may write to the five successor States of the Socialist Federal Republic of Yugoslavia—Bosnia and Herzegovina, Croatia, Serbia, Slovenia and The former Yugoslav Republic of Macedonia:

- noting the unpaid invoices for the debts that had accrued to the charge of the former Yugoslavia and that were outstanding as of 27 April 1992;
- stating that, consistent with the approach taken by the General Assembly with respect to the unpaid assessed contributions of the former Yugoslavia to the United Nations, it is the view of the United Nations that the total amount concerned should be apportioned

* United Nations, *Treaty Series*, vol. 729, p. 161.

** United Nations, *Treaty Series*, vol. 1015, p. 163

*** United Nations, *Treaty Series*, vol. 1465, p. 85.

**** Not reproduced herein.

among the successor States, taking into account (i) the respective dates on which each successor State informed the Secretary-General that it had ceased to exist as part of the Socialist Federal Republic of Yugoslavia and (ii) the proportions set forth in Article 5 (2) of Annex C to the Agreement on Succession Issues of 29 June 2001;

- requesting the five successor States to inform you as soon as possible of their respective shares of the debts in question; and
- stating that you will then issue invoices to them for the sums so identified.

5. With respect to the debts that accrued to the charge of the former Yugoslavia, subsequently to 27 April 1992, those debts may be charged against the respective fund balances.

6. With respect to the particular debts that are the subject of your memorandum, it is therefore essential to know on what specific dates those debts accrued, most especially whether they accrued before or after 27 April 1992.

7. With respect to the Fourth Review Conference of the Non-Proliferation Treaty, we are not fully familiar with the practice of the Secretariat relating to the billing of the costs of this and other review conferences of that treaty. However, on the basis of the legal instruments, it would be our view that the obligation of the Socialist Federal Republic of Yugoslavia to pay to the United Nations its apportioned share of the costs of the Fourth Review Conference, including the sessions of its Preparatory Committee, accrued to its charge immediately that the Review Conference closed, on 14 September 1990. This remains the case, even though it was still to be ascertained at that time what the total actual costs of the Review Conference were and even though it was apparently only on 30 September 1992 that the Secretariat was in a position to inform the States Parties that had participated in the Conference what their respective shares of those costs were. This debt would therefore seem to fall into the first of the two categories described in paragraph 3 of this memorandum.

8. In the same way, it would appear from the relevant legal instruments that the obligation of the former Yugoslavia to reimburse the United Nations for its share of the costs of the Third Review Conference of the Parties to the Biological Weapons Convention, including its Preparatory Committee, accrued to the charge upon the closure of that conference, on 27 September 1991. This debt likewise would therefore seem to fall into the first of the two categories described in paragraph 3 of this memorandum.

9. With respect to the First Session of the Ad Hoc Group of Governmental Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint (VEREX I), it would appear from the legal instruments that we have been able to locate that, in the same way as the Fourth Review Conference of the Non- Proliferation Treaty and the Third Review Conference of the Parties to the Biological Weapons Convention, the obligation of the former Yugoslavia to reimburse the United Nations for its share of the costs of that Session accrued to its charge upon the closure of that session, on 10 April 1992. This debt would therefore once more seem to fall into the first of the two categories described in paragraph 3 of this memorandum.

10. With regard to the fifth financial period of the States Parties of the Convention Against Torture, it appears that the practice of the States Parties in applying the Convention's provisions relating to the expenses of meetings of the States Parties and of the Com-

mittee against Torture and the expenses of the members of the Committee was to require States that were parties to the Convention at the start of a calendar year to pay a share of the estimated expenditures for that calendar year in advance (CAT/SP/SR.1, para. 54; see also CAT/SP/16, paras. 10 and 11). It also appears that they treated the obligation to pay that sum and the resulting debt as accruing to the charge of the States concerned on the date on which assessment notices were transmitted to the States Parties (CAT/SP/SR.1, para. 54, and CAT/SP/4, para. 28). We do not know when the assessment notices for the fifth financial period were transmitted to States Parties. However, we would assume that it was before 27 April 1992, particularly since the eighth session of the Committee against Torture opened on 27 April 1992 and the Secretary-General had previously made it clear, and the States Parties had agreed, that meetings of the Committee would not take place unless sufficient funds had first been collected from the States Parties (*ibid.*).

11. If this assumption is correct, then, as of 27 April 1992, the former Yugoslavia was already under an obligation to reimburse the United Nations for its share of the estimated expenditure for the fifth financial period: The resulting debt would therefore seem to fall into the first of the two categories described in paragraph 3 of this memorandum. In this connection, it should be noted that there appears to have been a slight over-assessment in respect of the estimates in respect of the fifth financial period (CAT/SP/16, Annex IV). The resulting overpayment was applied as a credit against the 1994 assessment (CAT/SP/SR.1, para. 54, and CAT/SP/4, para. 29; see also CAT/SP/16, Annex IV).

12. With respect to the sixth financial period of the States Parties of the Convention against Torture, it would be our assumption that the assessment notices for that period were transmitted to States Parties well after 27 April 1992. If so, the resulting debt should fall to be treated in the manner described in paragraph 5 of this memorandum.

7 October 2011

(*h*) Note concerning a request from Permanent Mission of [State] to provide research support for a book being written independently

Request of research support for book by outside individuals—Policy of Department of Peacekeeping Operations (DPKO) to facilitate research requests and review output—Authors may only use publicly available documents—Written agreement of terms and conditions of assistance recommended—Interviews with United Nations officials on voluntary basis

1. This is with reference to your Note of [date] addressed to [the Assistant Secretary-General of the Office of Legal Affairs (OLA)] in relation to the above-referenced matter. On the basis of the information provided, we understand that the Permanent Mission of [State] to the United Nations has forwarded a letter, dated [date], addressed to the Executive Office of the Department of Peacekeeping Operations (DPKO) seeking support for a research project. The project in question is a book by [author 1] and [author 2], Fellows at [Entity] in [State] which will be entitled [. . .]. The purpose of the book, as we understand it from your Note, is to critically examine "how the evolving strategic guidance of the Security Council has been translated into United Nations-led military operations".

2. In your Note you mention that it is a standard practice of the Public Affairs Section (PAS) of DPKO to: (i) facilitate as much as possible all research requests from outside enti-

ties and individuals, and (ii) to review the final output in such circumstances and to reserve the right to make any necessary changes in the interest of the Organization.

3. Given the scope and magnitude of the research and hence the assistance to be provided by DPKO, you seek our guidance in responding to the request for assistance to ensure an appropriate degree of control over the content of the book. We set our advice below.

4. We certainly agree with your assessment that the scope and magnitude of the research as well as the proposed timeline are ambitious and that the United Nations military strategy, as a theme, is an issue of particular sensitivity for the Organization. This notwithstanding, we note that the decision as to whether and to what extent DPKO wishes to cooperate with the authors of the book remains a policy matter. Having said that, we would note the following.

5. We understand from the documents attached to your Note that the authors of the book are intending to rely to a large extent on "United Nations official documents" (it is not clear to us what types of documents they are initially envisaging to consult) as well as on private interviews with high-ranking officials (both current and former) of the Organization.

6. As far as United Nations documents are concerned, the authors should be informed that only publicly available documents may be used in the preparation of the book. Further and regarding the access to high-ranking officials, given that the Organization's cooperation would be purely voluntary, the United Nations is not in a position to impose upon its officials to cooperate with such research and the authors of the book should be informed that access to United Nations staff can only be offered on a voluntary basis. The voluntary nature of the participation should also be made clear to the United Nations officials whose cooperation would be requested.

7. We also note that the schedule of work proposed by the authors involves multiple visits to more than a dozen peacekeeping missions starting as early as next month. Access to peacekeeping missions raises financial as well as security and other logistical issues (e.g., visas) that should be clearly addressed and agreed upon with the authors prior to agreeing to any form of cooperation or assistance from the United Nations.

8. Based on the foregoing and while we understand the interest of PAS in assisting research projects in general, we would advise entering into a written agreement with the authors of the book establishing the terms and conditions of the assistance to be provided by the Organization and in particular that:

(*i*) the assistance of the United Nations shall be on a voluntary basis and therefore, the United Nations cannot ensure access to all individuals listed in their request nor to all field missions;

(*ii*) any costs incurred in relation to the research, including any actual costs incurred by the Organization, shall be borne entirely by the authors and the United Nations shall be indemnified and held harmless in the event of any damages and/or third-party claims arising from the assistance to the authors;

(*iii*) with respect to visits to peacekeeping missions, the United Nations shall not be responsible for providing security or medical assistance to the authors, and they shall be responsible for obtaining any necessary visas;

(*iv*) the information obtained by the authors shall be confidential and shall be used for the sole purposes of the book; and

(*v*) drafts (including in particular the final draft) of the book shall be shared with the designated official(s) of the United Nations (including the interviewees to the extent a review of the accuracy of the text is needed) and shall be subject to ultimate approval by the designated official(s) of the United Nations (presumably in PAS/DPKO).

9. OLA remains of course ready to assist DPKO in reviewing any such agreement.

16 November 2011

(*i*) Interoffice memorandum to the Chief of the Disarmament Forum, United Nations Institute for Disarmament Research (UNIDIR), concerning establishment of a distinctive emblem for the UNIDIR

Establishment of distinctive emblem—Separately constituted United Nations bodies may use distinctive emblems—UNIDIR as a United Nations body may establish distinctive emblem—Trademark/copyright search of proposed graphic design to avoid infringement of any third-party's trademark or copyright—Registration of distinctive emblem with world intellectual property organization

1. This refers to your e-mail message of [date] seeking advice from the Office of Legal Affairs (OLA) on the establishment of a distinctive emblem for the United Nations Institute for Disarmament Research (UNIDIR). This refers also to subsequent communications and telephone conferences between representatives of our Offices on the matter.

2. You informed OLA that your Office has been in contact with the Graphic Design Unit, Department of Public Information (DPI), on this matter, and DPI suggested that UNIDIR first seek OLA's guidance on the establishment of the UNIDIR emblem before seeking DPI assistance in preparing a draft graphic design of the special emblem. You also informed us that UNIDIR's Board of Trustees has been considering the establishment of a distinctive emblem for UNIDIR for some time, and that it is supportive of your office's initiative in this regard.

3. Pursuant to General Assembly resolution 37/99 of 13 December 1982, and as set forth in Article 1 of the Statute of UNIDIR approved by the General Assembly resolution 39/148 of 17 December 1984, "[UNIDIR] is an autonomous institution within the framework of the United Nations, established by the General Assembly for the purposes of undertaking independent research on disarmament . . ." In addition and according to Article III of its Statute, UNIDIR is governed by a Board of Trustees that, among other tasks, shall "[e]stablish principles and directives to govern the activities and operation of the Institute."

4. Administrative Instruction ST/AI/189/Add.21 of 15 January 1979, entitled "Regulations for the Control and Limitation of Documentation, Use of the United Nations Emblem on Documents and Publications", as revised by ST/AI/189/Add.21/Amend.1, dated 23 January 2008, states in paragraph 14 that separately constituted "United Nations bodies" may use distinctive emblems of their own on their official documents and publications, subject to the following conditions:

"a) On official documents, which must bear the United Nations emblem, the distinctive emblem of the United Nations body may be used in conjunction with the United Nations emblem, provided that the latter is given greater typographical pre-eminence;"

"b) On non-official documents, the distinctive emblem may be used alone; it should not be combined with the United Nations emblem."

Because footnote 2 of paragraph 14 of that Administrative Instruction defines "United Nations bodies" as "organs [. . .] established by the General Assembly as autonomous or semi-autonomous entities", the term "United Nations bodies" connotes separately established entities, as opposed to mere Departments of the Secretariat. Since UNIDIR is an autonomous institution established by the General Assembly, UNIDIR is a "United Nations body" within the meaning of paragraph 14 of that Administrative Instruction.

5. In view of the above, we have no objection to UNIDIR's establishing its own distinctive emblem, provided that its use would be in accordance with ST/AI/189/Add.21.[1] We recommend that the proposed emblem be approved by the UNIDIR Board of Trustees. You have stated that the draft design of the distinct emblem has not yet been prepared. When the proposed design is finalized, we would be prepared to review it. In addition, we wish to note that it might be necessary for UNIDIR to conduct a trademark or copyright search of the graphic elements of the proposed design to ensure that they do not infringe any third-party's trademark or copyright.

6. Further, we suggest that UNIDIR register its distinct emblem, when it is approved by its Board of Trustees, with the World Intellectual Property Organization (WIPO) for protection under Article 6 *ter* of the Paris Convention for the Protection of Industrial Property, 1972 (Paris Convention),* in particular, if the design of the new UNIDIR emblem is separate and distinct from that of the United Nations emblem. In view of the status of UNIDIR as a subsidiary organ of the General Assembly, it appears that UNIDIR is eligible to seek protection of its emblem under the Paris Convention. This Office can assist UNIDIR in this undertaking.

[. . .]

17 November 2011

3. Procurement

(*a*) Interoffice memorandum to the Director, Logistics Support Division of the Department of Field Support, concerning the definition of *force majeure* included in a Letter of Assist

Review of definition of *force majeure* included in letter of assist—Definition of *force majeure* revised in 2008 United Nations General Conditions of Contract—

[1] For example, paragraph 15 of the Administrative Instruction ST/AI/189/Add.21 states that: "Where the designation of a United Nations body appears together with the United Nations emblem on the masthead of an official document or on the cover of a publication, the full name of the body should, preferably, be given rather then acronyms. The emblem should, if possible, appear close to the words 'United Nations'"

* United Nations, *Treaty Series*, vol. 828 p. 305.

CHANGING *FORCE MAJEURE* WORDING OF LETTER OF ASSIST IN EFFECT WOULD REQUIRE AMENDING LETTER OF ASSIST—RECOMMENDED DEFINITION OF *FORCE MAJEURE* FOR FUTURE LETTERS OF ASSIST

1. This refers to your memorandum, dated [. . .], requesting review by the Office of Legal Affairs (OLA) of the definition of *force majeure* included in a Letter of Assist (LOA), [No.], that was concluded with the Government of [State], for the period 11 April 2009 through 10 April 2011, for the provision of four Lama military helicopters in support of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).

2. Article 25.3 of LOA, [No.], defines *force majeure* as follows:

> "*Force Majeure* as used in this Letter of Assist means acts of God, war, insurrection or other acts of a similar nature or force."

The above-reproduced definition of *force majeure* is generally consistent with the definition of *force majeure* that was included in the older versions of the United Nations General Conditions of Contract ("UNGC") prior to the comprehensive review and revision of the UNGCs in 2008. However, when the UNGCs were revised in 2008, the definition of *force majeure* was modified to remove religious references and to incorporate the provisions relating to harsh conditions or civil unrest in areas in which the United Nations has peacekeeping or similar operations.

3. Accordingly, we recommend that the definition of *force majeure* included in future LOAs be revised as follows:

> "*Force majeure* as used in this Letter of Assist means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Government. The Government acknowledges and agrees that, with respect to any obligations under the Letter of Assist that the Government must perform in areas in which the United Nations is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, or to any incidents of civil unrest occurring in such areas, shall not, in and of itself, constitute *force majeure* under the Letter of Assist."

4. With respect to LOA, [No.], which has already been in effect since [date], the only way to include such change of wording would be to amend LOA, [No.]. This could, however, lead to unintended consequences, such as, for example, the Government of [State] proposing to open up for negotiations other terms and conditions included in that LOA.

25 February 2011

(*b*) Interoffice memorandum to the Director, Procurement Division, Office of Central Support Services of the Department of Management (OCSS/DM), concerning application for an Open Individual Trade Control Export License from the [State 1] [Organization]

CONTRACTOR REQUESTS ASSISTANCE FROM UNITED NATIONS WITH OBTAINING OPEN EXPORT LICENSE—CONTRACTOR RESPONSIBLE FOR OBTAINING EXPORT LICENSES UNDER UNITED NATIONS GENERAL CONDITIONS OF CONTRACT FOR GOODS AND SERVICES (UNGCC) AND UNDER CONTRACT—UNITED NATIONS REQUIRED TO PROVIDE REASONABLE AND APPROPRIATE ASSISTANCE WITH OBTAINING EXPORT LICENSE

1. This refers to your memorandum, dated [. . .], seeking advice from the Office of Legal Affairs (OLA) regarding a request from [Contractor] for the United Nations' assistance in obtaining an Open Individual Trade Control Export License ("Open License") from [Organization][1] of [Department] of [State 1]. This also refers to subsequent communication between the representatives of our Offices concerning this matter.

Background

2. We understand from the information provided by the Procurement Division (PD) that the United Nations and [Contractor] concluded a contract ([contract no.]) for the provision of armoured vehicles, spare parts and related goods, and ancillary services (the "Contract"). The Contract, which came into effect as of [date], has an initial term of three years. We understand further that, under the Contract, [Contractor] supplies armoured vehicles that are manufactured in [Contractor]'s facilities in [State 2] and exported from [State 2] to various United Nations missions.

3. According to an email from [Contractor] to PD, dated [date], a copy of which was transmitted with your memorandum, exports of armoured vehicles by [Contractor] from [State 2] to various United Nations missions are subject to [State 1] export control regulations and require [Contractor] to obtain [State 1] export licenses for such shipments.[2] [Contractor] explains in its email that, currently, [Contractor] obtains a separate export license from [Organization] for each shipment of armoured vehicles from [State 2]. [Contractor] advises that this arrangement, which is time consuming and cumbersome, can potentially result in delayed shipments to the United Nations missions. [Contractor] points out that, such delays, in turn, could be problematic in situations where "immediate availability and dispatch" of armoured vehicles is vital for activities of United Nations missions.

4. In order to avoid delays in shipments caused by applying for and obtaining multiple export licenses from [Organization], [Contractor] proposes obtaining an Open License from [Organization], which would allow multiple shipments of armoured vehicles with-

[1] According to the information made available on the [Organization] website . . . , [Organization] is the [State 1] export licensing authority for "strategic" or "controlled" goods, which are described as "a wide range of items including so-called dual-use goods, torture goods, radioactive sources, as well as military items." The [Organization] website states that [Organization] "is responsible for assessing and issuing (or refusing) export licenses for a wide range of controlled or so called 'strategic' goods. This includes military and dual-use items."

[2] [Organization] website states that, pursuant to [State 1] Export Control Act of [year], trading of goods from one overseas destination to another is a licensable activity.

out obtaining separate export licenses for each shipment. In this regard, we note that the [Organization] website describes the Open License as a license that "is specific to a named trader and covers involvement in the trading (of specific goods between specified overseas sources and overseas destination countries and/or specified consignor(s), consignee(s) and end-user(s). It is a type of general permit to do things and allows a range of activities, such as sourcing goods from a number of places which then go to a number of other countries." We understand from [Contractor]'s email that it has consulted with [Organization] on applying for an Open License and that [Organization] has recommended that [Contractor] obtain a letter from the United Nations in support of its application for an Open License.

General Convention and the Contract

5. Article II, Section 7 of the Convention on the Privileges and Immunities of the United Nations* (the "General Convention") provides that "[t]he United Nations, its assets, income and other property shall be exempt from . . . prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country." Pursuant to the foregoing provision of the General Convention, where the United Nations itself is the importer or exporter, provided that the imports or the exports are for the United Nations' official use, the United Nations would be exempt from any requirement to obtain an import or export license from any Member State before importing or exporting any such items. However, where the import or export is by a United Nations contractor supplying goods to the United Nations, since the importer or exporter would be the United Nations contractor, any obligation to obtain an import or export license for such equipment or supplies would apply to the contractor and not to the Organization.

6. Consistent with the above-cited provision of the General Convention, Article 13.1 of the Contract specifies that [Contractor] is "responsible for obtaining, at its own cost, all licenses, permits and authorizations from governmental or other authorities necessary for the performance of this Contract, including without limitation . . . custom clearances for equipment and material provided by the Contractor." With respect to export licenses in particular, Article 7.10 of the United Nations General Conditions of Contract for goods and services (the "UNGCC"), which is annexed to the Contract, stipulates that [Contractor] would be responsible for obtaining any export license required with respect to the goods or products provided to the [Contractor] under the Contract. Accordingly, under the Contract, it is [Contractor]'s responsibility to obtain export licenses, such as the Open License from [Organization]. We note, however, that both Article 13.1[3] of the Contract and Article 7.10[4] of the UNGCC include a requirement that the United Nations lend reasonable and appropriate assistance to [Contractor] for obtaining any relevant export license, which would include export licenses such as the Open License from [Organization].

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

[3] Article 13.1 of the Contract provides that "[t]he UN may cooperate with the Contractor as necessary and appropriate, including, where appropriate, any liaising with relevant authorities."

[4] Article 7.10 of the UNGCC states that: [s]ubject to and without any waiver of the privileges and immunities of the United Nations, the United Nations shall lend the Contractor all reasonable assistance required for obtaining any such export license.

7. On the basis of the foregoing, it would be consistent with the terms of the Contract, as well as the General Convention, for PD to assist [Contractor] in connection with its Open License application to [Organization]. For this purpose, we have prepared and enclose herewith for PD's consideration a draft letter from PD to [Organization].* If PD is satisfied with the enclosed draft letter, PD may wish to share it with [Contractor], prior to sending the signed letter to [Organization].

28 September 2011

4. International humanitarian law

Letter to [name] Permanent Representative of [State] to the United Nations, New York, concerning the definition of the term "armed conflict"

Definition of "armed conflict" under International Humanitarian Law—Criteria for existence of armed conflict, including non-international armed conflict, under the Geneva Conventions, 1949** and Additional Protocol II to the Geneva Conventions, 1977***—non-international armed conflict more than sporadic act of violence—party to an "armed conflict" must be organized, with a responsible command structure; exercise control over a part of a territory; and be able to carry out sustained and concerted military operations

This is in reference to your letter of [date], in which you sought our views on the legal term "armed conflict", and its application in the case of [State]. I am sure you will understand that the Office of Legal Affairs does not provide legal advice to individual Member States on the application of international law in any given situation. However, we are pleased to share with you the following information.

The term "armed conflict" is a legal term designating the conduct of hostilities—in an international or non-international context—and to which international humanitarian law is applicable. While there is no precise definition of the term "armed conflict", common article 2 of the Geneva Conventions, 1949 provides that,

> " . . . the present convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more High Contracting Parties, even if the state of war is not recognized by one of them".

In his commentary**** to article 2, Jean Pictet made the following observation on the existence of "armed conflict" as a condition for the applicability of international humanitarian law,

> " . . . there is no need for a formal declaration of war, or for recognition of the existence of a state of war, as preliminaries to the application of the Convention. The occurrence of *de facto* hostilities is sufficient . . . any difference between two States and leading to the intervention of members of the armed forces is an armed conflict within

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* Not reproduced herein.

** United Nations, *Treaty Series*, vol. 75, pp. 31, 85, 135 and 287.

*** *Ibid*., vol. 1125, pp. 3 and 609.

**** Jean Pictet, ed., *The Geneva Conventions of 12 August 1949: commentary*, (Geneva, International Committee of the Red Cross, 1960), p. 28.

the meaning of Article 2, even if one of the Parties denies the existence of a State of war. It makes no difference how long the conflict lasts, or how much slaughter takes place . . ."

While common Article 2 addresses a situation of an international armed conflict, common Article 3 of the Geneva Conventions, 1949 and Additional Protocol II to the Geneva Conventions, 1977 address situations of non-international armed conflict.

Article 1 of Protocol II sets forth certain additional criteria in respect of non-international armed conflicts. It states that Protocol II applies in respect of armed conflicts "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol". It also specifies that it does "not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts".

Thus, under international humanitarian law, an "armed conflict" of a non-international character is more than a sporadic act of violence, and "a party to an armed conflict" must be (i) organized, with a responsible command structure; (ii) exercise control over a part of a territory; and (iii) be able to carry out sustained and concerted military operations, which criteria are cumulative in nature.

We trust that the foregoing will be of assistance to your authorities in determining whether the concept of armed conflict applies in the circumstances of [State]. In this connection, we enclose for your information a paper prepared by the International Committee of the Red Cross (ICRC) in 2008 entitled "How is the Term 'Armed Conflict' Defined in International Humanitarian Law".*

[. . .]

25 July 2011

5. Conflict resolution

Interoffice memorandum to the Special Adviser to the Secretary-General for Yemen, concerning the Secretary-General's Good Offices, the [Entity] initiative and Amnesty

Secretary-General's Good Offices—Possible inclusion of Amnesty provision in crisis settlement agreement—Guidelines for United Nations Representatives on Certain Aspects of Negotiations for Conflict Resolution—United Nations cannot condone, or be seen to condone, amnesties for genocide, crimes against humanity, war crimes, crimes of sexual violence or gross violations of human rights—best practices in enhancing mediation and its support activites

1. The purpose of this memorandum is to provide you with legal advice, further to your memorandum dated [. . .] to [the Legal Counsel], on the possible inclusion of an amnesty provision in a settlement agreement for the crisis in Yemen.

2. Our advice, in summary form, is as follows:

* Available from http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf (accessed on 31 December 2011).

(*a*) You should continue to be guided by the 2006 Guidelines for United Nations Representatives on Certain Aspects of Negotiations for Conflict Resolution, and by paragraph 11 of those Guidelines in particular. You should accordingly make it clear to the parties that the United Nations cannot condone, or be seen to condone, amnesties for genocide, crimes against humanity, war crimes, crimes of sexual violence or gross violations of human rights.

(*b*) Should it appear that the settlement agreement may include a provision for amnesty that would, or that could be understood to, be all-embracing or "blanket" in nature, you should seek the inclusion in the agreement of a clause that expressly states that the amnesty shall not apply to these particular crimes.

(*c*) This equally applies if the settlement agreement does not expressly provide for an amnesty or restate the amnesty provisions in the [Entity] initiative, but incorporates this element of the [Entity] initiative by reference.

(*d*) If one or more of the parties insists on the inclusion in the settlement agreement of a provision on amnesty that would, or that could be understood to, include amnesty for such crimes, you should make it clear to the parties that the Secretary-General would, in such circumstances, find it necessary to take a stance on the public record concerning that aspect of the agreement. Depending on the circumstances, such a stance could include:

(i) if you are invited to sign the agreement as a witness:

—declining to do so and issuing a public statement explaining why; or

—doing so, but appending to your signature an annotation to the effect that the United Nations does not condone amnesties for genocide, crimes against humanity, war crimes, crimes of sexual violence and gross violations of human rights; or

(ii) if you are not invited to sign the agreement as a witness, issuing a public statement to the same effect.

3. Our reasons for this guidance, together with our advice on the four issues described in your memorandum, are set out more fully in an attachment to this memorandum.

4. We stand ready to provide you with more specific guidance in the light of the circumstances as they emerge. [. . .]

5. More generally, we would be grateful if, in advance of the signature of any settlement agreement, you could send the draft to this Office for our review, consistent with the best practice identified in the Secretary-General's report of 2009 on enhancing mediation and its support activities (S/2009/189, paragraph 17).

17 November 2011

Attachment

1. This attachment addresses the four issues described in your memorandum in the order in which they were raised.

(a) Amnesty in the light of Security Council resolution 2014 (2011)

2. In the fifteenth paragraph of the preamble of its resolution 2014 (2011), the Security Council has stressed that "the best solution to the current crisis in Yemen is through an

inclusive and Yemeni-led political process of transition that meets the legitimate demands and aspirations of the Yemeni people for change".

3. In operative paragraph 4 of that resolution, the Security Council has "*[r]eaffirm[ed]* its view that the signature and implementation as soon as possible of a settlement agreement on the basis of the [Entity] initiative is essential" for such a process and has "*call[ed] on* all parties in Yemen to commit themselves to implementation of a political settlement based upon this initiative".

4. In operative paragraph 11 of the same resolution, the Security Council has "[r]equest[ed] the Secretary-General to continue his Good Offices, including through visits by the Special Adviser, and to continue to urge all Yemeni stakeholders to implement the provisions of this resolution".

5. The Secretary-General, in carrying out his mission of good offices in Yemen, is accordingly required to promote and seek to secure the signature of a settlement agreement that is based on the [Entity] initiative.

6. As appears from the attachment to your memorandum, the [Entity] initiative includes, as one of its five basic principles, the principle that "[a]11 parties commit to stop all forms of revenge, pursuit [*sic*] and prosecution by means of guarantees and pledges given towards this end". It further appears from that attachment that the initiative goes on to provide that the Yemeni legislature "is to acknowledge [that is, presumably, to adopt or to enact] laws granting immunity from legal and judicial prosecution for the president and those who worked with him during the period of his rule".

7. It would accordingly seem that the Secretary-General, in carrying out his mission of good offices, is required, further to Security Council resolution 2014 (2011), to promote a settlement that includes an amnesty.

8. This having been said, the amnesty provisions in the [Entity] initiative would seem to be formulated in quite broad and general terms. It clearly remains, as part of the process of reaching a settlement, to make the scope and application of those provisions more specific and precise.

9. In this connection, it should be recalled that, in operative paragraph 8 of its resolution 1325 (2000), the Security Council:

> "*Emphasize[d]* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard *stresse[d]* the need to exclude these crimes, where feasible from amnesty provisions".

10. Subsequently, in operative paragraph 4 of its resolution 1820 (2008), the Security Council:

> "*Note[d]* 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, *stresse[d]* the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and *call[ed] upon* Member States to comply with their obligations for prosecuting persons responsible for such acts . . . and *stresse[d]* the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth and national reconciliation".

11. Further, the Secretary-General has publicly affirmed on several occasions his position that the United Nations cannot condone amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights. The Organization's competent political organs in the field of human rights have also recognized this.

12. Security Council resolution 2014 (2011) is to be understood against this background. It therefore cannot be said that, by endorsing a settlement "on the basis of the [Entity] initiative, the Security Council has in any way instructed or mandated the Secretary-General, in discharging his mission of good offices in Yemen, to promote a settlement that would include a "blanket" amnesty extending to genocide, crimes against humanity, war crimes, crimes of sexual violence or gross violations of human rights.

13. This being so, you should continue to be guided by the 2006 Guidelines for United Nations Representatives on Certain Aspects of Negotiations for Conflict Resolution, in particular by its paragraph 11. You should accordingly make clear to the parties that the United Nations cannot condone, or be seen to condone, amnesties for genocide, crimes against humanity, war crimes, crimes of sexual violence and gross violations of human rights.

(b) Exclusion clause

14. Should it appear that the settlement agreement will include a provision for amnesty that would be all-embracing or "blanket" in scope, or that could be understood to be so, you should, consistently with the 2006 Guidelines, seek the inclusion in the agreement of a clause of the kind that you propose in your number 2, expressly stating that the amnesty shall not apply to genocide, crimes against humanity, war crimes, crimes of sexual violence and gross violations of human rights.

15. In the light of operative paragraph 4 of Security Council resolution 1820 (2011), it should be emphasized that any such exclusionary clause should include express mention of "crimes of sexual violence".

(c) Amnesty by reference or by implication

16. The position of the Secretary-General, as set out in the 2006 Guidelines, is that the United Nations cannot condone amnesties for genocide, crimes against humanity, war crimes, crimes of sexual violence and gross violations of human rights. This is so whether a peace agreement expressly provides for such an amnesty, whether it does so by reference or whether it does so by implication.

17. Were a settlement agreement to contain a clause along the lines described in your number 3, it would incorporate by reference the provisions of the [Entity] initiative that provide for the granting of immunity from prosecution. As noted above, those provisions are broad and general in scope and are not accompanied by any qualification, limitation or exception. They could accordingly be understood to extend to embrace immunity from prosecution for any and every crime that might have been committed by any of the parties, including genocide, crimes against humanity, war crimes, crimes of sexual violence and gross violations of human rights.

18. This being so, it would be necessary, consistently with the 2006 Guidelines, that you take action in order to avoid a situation arising in which the Organization could be understood to be endorsing the granting of amnesty for such crimes.

(d) Clarificatory statement

19. In the circumstances described in your number 4, the agreement would provide for the grant of an amnesty along the lines of that contemplated in the [Entity] initiative, presumably without the accompanying exception contemplated in your number 2. It would thus provide for an amnesty that was potentially all-embracing or "blanket" in nature and that could accordingly be understood to extend to amnesty for genocide, crimes against humanity, war crimes, crimes of sexual violence and gross violations of human rights.

20. If you were to be invited to sign such an agreement as a witness, it would be necessary that you take action for the purpose of avoiding the United Nations being understood to be condoning the grant of an amnesty for such crimes. You might do this in a number of ways. These might include:

(a) Declining to sign the agreement as a witness and issuing a public statement explaining why;

(b) Signing the agreement, but appending to your signature an annotation to the effect that the United Nations does not condone amnesties for genocide, crimes against humanity, war crimes, crimes of sexual violence and gross violations of human rights;

Which of these two courses of action you should take, as well as the precise wording of any annotation or public statement, would depend on the manner in which the amnesty provision of the settlement agreement was framed and on the circumstances surrounding its negotiation and conclusion.

21. Even if you were not to be invited to witness the settlement agreement, it might nevertheless be necessary, in the situation that you describe in your number 4, for you to make a public statement to the effect that the United Nations does not condone amnesties for genocide, crimes against humanity, war crimes, crimes of sexual violence and gross violations of human rights. Whether this was so would depend on the circumstances surrounding the negotiation and conclusion of the agreement.

(e) General

22. It will be apparent from what has been said above that the precise action that you would be best advised to take will depend on future developments that cannot be foreseen or anticipated at this time. We accordingly stand ready to provide you with more direct and specific guidance in the light of circumstances as they emerge.

6. Other issues

Letter to the Permanent Representative of [State] regarding registration affecting the Organization in the Internet's domain name and addressing system

Protection of interest of the Organization in Internet's domain name and addressing system (DNS)—Protection of name of United Nations and names of

SUBSIDIARY ORGANS IN DNS—PROTECTION AGAINST EFFECTS OF DEREGULATION OF GENERIC TOP-LEVEL DOMAIN NAMES

I am writing to seek your Government's assistance in protecting the rights of the United Nations, including the principal organs and the separately funded and administered subsidiary organs of the United Nations, with respect to registrations affecting the Organization in the Internet's domain name and addressing system managed by a company under contract with your Government.

As you know, the [Corporation] was incorporated as a not-for-profit corporation under the laws of [State] in [date] in order to oversee various aspects of the Internet that were previously performed on behalf of the Government of [State] by other entities, such as the [Entity], which [Corporation] now operates. In particular, pursuant to a Memorandum of Understanding, dated [date] the [Government Department] engaged the services of [Corporation] in order to collaborate with the Department in the development of policies and procedures for the Internet's domain name and addressing system. In [year], as an amendment to the original Memorandum of Understanding, the Department further engaged the services of [Corporation] to perform various technical functions supporting the Internet's domain name and addressing system, including [Entity] services. Finally, in [year], the Department and [Corporation] concluded an Affirmation of Commitments in order to institutionalize and memorialize the technical coordination of the Internet's domain name and addressing system (DNS).

While the thrust of the foregoing agreements between the [Government Department] and [Entity] has been to work towards institutionalizing the management of the DNS in a private-sector led institution, the Government of [State] still retains its authority over the management of the DNS, subject to the [Government Department's] agreements with [Entity]. For this reason, the United Nations requests the assistance of [State] in protecting the interest of the Organization in the DNS in two respects: (i) protection generally of the name of the United Nations, including the names of the subsidiary organs of the United Nations, which are all entitled to protection pursuant to Article 6 *ter* of the Paris Convention on the Protection Industrial Property, 1972 (Paris Convention);* and (ii) assistance with respect to the effects of [Corporation's] decision to deregulate the generic top-level domain names.

The first issue concerns the protection generally of the name of the United Nations, including its subsidiary organs, in the DNS. A few years ago, in connection with [Corporation's] Second Internet Domain Name Process, the United Nations worked with other UN System organizations and other international intergovernmental organizations to seek [Corporation's] agreement to exempt international intergovernmental organizations from certain provisions of the rules of procedure of [Corporation's] Uniform Dispute Resolution Policy (UDRP) that were inconsistent with the status and privileges and immunities of such international intergovernmental organizations. In particular, under [Corporation's] rules, registrants in the DNS are required to accept that disputes over infringement of trademarks in the DNS will be resolved through the UDRP. However, the previous and current versions of [Corporation's] rules of procedure for the UDRP require complainants alleging that a domain name registration infringes their trademark to agree that they "will submit, with

* United Nations, *Treaty Series*, vol. 828 p. 305

respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction," which is defined under [Corporation's] rules of procedure as a court located at the registrar of the domain name or at the location of domain-name holder.

Because of this provision in [Corporation's] rules of procedure, international intergovernmental organizations cannot file complaints under [Corporation's] UDRP to protect their names in the DNS, as doing so could constitute a waiver of their privileges and immunities. Nevertheless, despite the pleas of many international intergovernmental organizations, [Corporation] was unfortunately unwilling to accommodate such organizations in [Corporation's] procedures for resolving disputes over usurpation of trademarks in the DNS. Thus, international intergovernmental organizations, including the United Nations and its subsidiary organs, routinely face problems from cyber-squatters and other persons and entities infringing their names in the DNS without an effective remedy under [Corporation's] policies and rules for the administration of the DNS.

The United Nations seeks the assistance of your Government in resolving this long-standing problem. The United Nations relies on the assistance of your Government, as a party to the Paris Convention, in protecting its name, as well as the names of its subsidiary organs that are subject to the protections of the Paris Convention.

The second issue mentioned above concerns [Corporation's] recent decision to deregulate and, thereby, vastly expand the generic Top-Level-Domain (gTLD) names in the Internet. Previously, gTLD names were limited to a handful of suffixes, such as "dot-com," "dot-org," or "dot-gov." However, earlier this year, [Corporation] decided to end restrictions on suffixes for domain names. While this opening of the DNS will undoubtedly have far reaching commercial and social consequences that may prove to be extremely beneficial, the change will almost certainly prove to be exceptionally costly to international intergovernmental organizations and, thus, to the Member States who fund them. In this regard, [Corporation] has announced that the fees, which support the registration and systems for maintaining the new gTLDs, will be significantly higher than those charged for the traditional suffix registrations. [Corporation], thus, has announced that the cost of purchasing a new non-traditional gTLD name would be US $185,000, with an annual maintenance fee of US $25,000.

Given the inability of international intergovernmental organizations, including the United Nations and its subsidiary organs, to protect their names in the DNS through [Corporation's] UDRP, a compelling strategy for the United Nations and its subsidiary organs, as well as for any other international intergovernmental organization, may be to purchase and maintain all variations of the organization's name in the new system. For example, the United Nations might have to acquire "dot-un," "dot-unitednations," "dot-united-nations," etc. UNDP, UNEP, UNFPA, UNHCR, UNOPS, etc., might likewise have to follow suit. Given the permutations, registration charges payable to [Corporation] by these entities could quickly add up and pose a significant financial burden to these entities and to the Member States who fund them. Finally, [Corporation] has also recently allowed for the internationalization of domain names, thereby increasing the number of permutations of domains for which such entities would have to register in order to fully protect their names. [Corporation] has announced that the application period for purchasing a new non-traditional gTLD name will commence on 12 January 2012 and extend until 12 April 2012.

In view of the foregoing, the United Nations respectfully seeks the assistance of your Government in ensuring appropriate protection for the name of the United Nations and of its subsidiary organs in the Internet DNS administered by [Corporation] under its agreements with your Government. In this connection, in view of the imminent commencement date of 12 January 2012 that [Corporation] has set for the purchase of new non-traditional gTLD names, the United Nations would be grateful if representatives of the United Nations could meet as soon as possible with representatives of [Permanent Mission] in order to address this matter.

7 December 2011

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. International Labour Organization*

(Submitted by the Legal Adviser of the International Labour Conference)

(*a*) Provisional Record No. 15, 100th session, Report of the Committee on Domestic Workers

Discussion of parameters for standard final provisions of Conventions by conference Committees—Motion by Employer's group to discuss final provisions of draft Domestic Workers Convention—Conference Drafting Committee has competence to discuss the open parameters of the standard final provisions but not the content of the final provisions

The Employer's Group introduced a motion seeking to discuss two final provisions of the draft Domestic Workers Convention, namely the provisions on entry into force, and denunciation of the Convention. The Legal Adviser clarified that the standard final provisions included some parameters that were usually added unchanged by the Conference Drafting Committee unless the Committee decided otherwise. He confirmed that the Committee was competent to discuss the open parameters of the standard final provisions of the draft Convention, but not the content of the final provisions. The text of the standard final provisions had first been approved by the International Labour Conference in 1928, and amended in particular in 1946. A decision by the Committee on Domestic Workers to alter any of the open parameters would be followed by the Conference Drafting Committee.[1]

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* A number of Legal Opinions were rendered during the 100th Session of the International Labour Conference. Only two Legal Opinions have been selected for reproduction here. The others can be found in the records of the Conference.

[1] International Labour Organization, *Provisional Record No. 15 of the 100th Session of the International Labour Conference*, p. 75. Available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_157696.pdf (accessed on 31 December 2011).

(*b*) Provisional Record No. 18, Part 1, 100th session Report of the Committee on the Application of Standards

Discussion of conclusions of high-level missions before the Committee on the Application of Standards—Discussion is permissible so long as Employer members have no objection and the substance of the conclusions is not discussed in the Committee—Reading of the conclusions would supplement the General Report of the Committee of Experts and serve as a point of information to assist the Committee in the discharge of its mandate

Further to the request by the Worker members that the conclusions of a high-level tripartite mission be read out to the Committee, the Government Representative of Colombia asked for clarification regarding the legal basis for providing information to the Committee on the conclusions of the high-level tripartite mission, given that the conclusions had not yet been examined and noted by the Committee of Experts.

The Deputy Legal Adviser recalled that, procedurally, the Committee was still engaged in the discussion of the General Report of the Committee of Experts. The Worker members had requested to hear the conclusions of the high-level tripartite mission mentioned in paragraph 80 of the General Report of the Committee of Experts to which the Employer members had no objection so long as the substance of the conclusions were not discussed in the Committee. Since the mission took place in February 2011, the information could not have been included in the General Report itself. The reading of the conclusions would thus supplement the report and serve as a point of information to assist the Committee in the discharge of its mandate under article 7 of the Standing Orders of the Conference.[2]

2. International Fund for Agricultural Development

(Submitted by the General Counsel of the International Fund for Agricultural Development)

(*a*) Legal advice concerning a Head of State seeking International Fund for Agricultural Development (IFAD or the Fund) Funding to attend Governing Council

Sources of law in IFAD regarding the payment of travel expenses—Application of internal rules and/or policies where State dignitaries attend Governing Council as a guest

Further to your inquiry dated 19 January 2011 concerning the question whether IFAD may cover the travel expenses of the President of [State] to attend the opening session of the upcoming General Council, we wish to provide you with the following advice:

Section 3 of the By-Laws for the Conduct of Business of IFAD, states that the expenses incurred by Governors and their advisors in attending sessions of the Governing Council shall not be paid by the Fund. As we understand that the President of [State] will be participating in the Governing Council opening session as a guest, and not as a Governor or as a

[2] *Ibid*., Provisional Record No. 18, Part 1 of the 100th Session of the International Labour Conference, pp. 6–7. Available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_157817.pdf (accessed on 31 December 2011).

head of delegation, and as we have been informed that a Governor, appointed by [State] in accordance with rule 10 of the Rules of Procedure of the Governing Council, is currently in place, section 3 does not apply. Accordingly, the Fund is free to treat the President of [State] as it treats other guests, relying on applicable internal rules and/or policies for coverage of incurred expenses. As the invitation was extended by the President, the decision can be taken without the involvement of any governing body and provided that it fits within the budgetary appropriations.

20 January 2011

(*b*) Legal advice on the possibility of making information regarding nationality and date of birth mandatory on the online job application form

Practice in other specialized agencies of the United Nations—Obligations to consider the equitable geographical distribution criterion within a specific scope of the recruitment process—Date of birth is a determinant eligibility element—Principle of *patere legem*—Principle of equality—Objective and reasonable justification in making date of birth and nationality mandatory fields on the online application form

1. LEG has been requested to provide legal advice on a proposal to make information regarding the nationality and date of birth mandatory on the online job application form. LEG has been provided with the following information regarding other organizations:

- World Bank: the nationality and date of birth are mandatory fields on the online job application form;
- Food and Agriculture Organization and the United Nations World Food Programme: the nationality and date of birth do not constitute mandatory fields on the online job application form;
- United Nations Development Programme: the nationality and date of birth are mandatory fields on the online job application form.

Conclusions and recommendations

- According to the Agreement Establishing International Fund for Agricultural Development (AEI)[*] and the Human Resources Policy (HRP) adopted by the Executive Board, nationality is important for the Fund since it has an obligation to consider the equitable geographical distribution criterion in the employment of its staff. In addition, the Fund has determined the age of 62 as the mandatory age of separation. Consequently, the date of birth is also a determinant eligibility element in a recruitment process.
- We are of the opinion that there is an objective and reasonable justification in making the information on the date of birth and nationality mandatory fields on the online job application form.

[*] United Nations, *Treaty Series*, vol. 1059, p. 191.

Analysis

2. According to the AEI, *"In the employment of the staff and in the determination of the conditions of service, consideration shall be given to the necessity of securing the highest standards of efficiency, competence and integrity as well as to the importance of observing the criterion of equitable geographical distribution."* [1]

3. The HRP adopted by the Executive Board[2] stipulates that paramount in the appointment of staff is the necessity to secure the highest levels of competence by ensuring competition amongst candidates. The policy also indicates that recruitment should follow a process that neither discriminates nor unduly favours candidates on the basis of ethnic, social or political background, colour, *nationality*, religion, *age*, sex, disability, marital status, family size or sexual orientation. The HRP also gives authority to the President to develop procedures for the entitlement to benefits and for separation from the Fund.

4. The information on nationality is important for the Fund since it has an obligation to consider the equitable geographical distribution criterion in the employment of its staff for the purpose of preserving or developing the international character of the staff.

5. However, this obligation should be secondary to the necessity of securing the highest standards of efficiency, competence and integrity. In a case involving a similar provision (FAO), the International Labour Organization Administrative Tribunal (ILOAT) concluded that although the geographic distribution is a legally valid criterion, it is secondary to the obligation to secure the essential qualifications for the position. The Tribunal concluded as follows:

> "The selection committee is under the obligation to recommend for selection the candidate whose qualifications most closely meet the requirements of the post. *Therefore the essential qualifications required are the priority criterion, consideration of other criteria, including seniority of service and geographic distribution, which appear to be of a subsidiary nature is only envisaged where several candidates are equally well qualified."* [3]

6. It is clear from the ILOAT jurisprudence that geographic distribution may play a determinant role in the selection process where several candidates are equally well qualified for the same position. Therefore, we believe that this information is necessary for the Fund within the specific scope of a recruitment process. Since the first step of such process involves the filing of an online job application form, we believe that this information can be made mandatory.

7. The same reasoning should also apply to the date of birth which is also a determinant factor for the Fund as there is a mandatory age of separation established at the age of 62. In other words, the Fund has to abide by its own rules (*patere legem*) and therefore cannot recruit a candidate of 62 years and over in view of the fact that it imposes a mandatory separation to its staff at that age.[4]

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[1] Agreement Establishing the International Fund for Agricultural Development, article 6, section 8(d).

[2] International Fund for Agricultural Development, document EB 2004/82/R.28/Rev.1, section 8.1–8.4. Available from http://www.ifad.org/gbdocs/eb/82/e/EB-2004–82-R-28-REV-1.pdf (accessed on 31 December 2011). See also the Human Resources Procedures Manual, chapter 1, para. 1.21.

[3] International Labour Organization Administrative Tribunal, judgments 1871 and 551.

[4] Human Resources Procedures Manual, Chapter 3, paragraph 3.9.3.

8. The principle of equality does not mean that the same rules must be uniformly applied to everyone but that like facts require like treatment in law. In the same vein the European Court of Human Rights (ECHR) has established that "a difference in treatment between persons in analogous or relevantly similar positions is discriminatory if it has no *objective and reasonable justification*. In other words the difference in treatment is justified if it pursues a legitimate aim or if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realized."[5]

9. We are of the opinion that there is an objective and reasonable justification in making the information and the date of birth and nationality mandatory. The fact that this information is essential to the Fund in its recruitment processes and eventually for the determination of entitlements does not mean that it constitutes a basis for discrimination on the part of the Fund.

10. In view of the above and more specifically of the provisions of the AEI and MRP, we are of the opinion that the information regarding the date of birth and nationality is essential to the Fund in its performance of its recruitment obligations. Making this information a mandatory field on the online job application form would not infringe on any prevision of law applicable to the Fund. Moreover, if not required immediately on the online job application form, HRD would need to go back to the applicants in order to complete the form.

20 January 2011

(*c*) Legal advice concerning credentials and country representation on Governing Council

Rules for determining valid credentials of country representative as a Governor on the General Council—Overview of IFAD's rules of procedure—Presumption of ongoing validity unless representation withdrawn by notification to the President, challenged by Governor of another State or use of language limiting ongoing validity—Application of the rules in the cases of Côte d'Ivoire, Niger and Tunisia

On 14 January 2011, the Secretariat requested the Office of the General Counsel to provide a legal opinion with regards to the review and acceptance of credentials for representatives of Côte d'Ivoire, Niger, and Tunisia at the upcoming Governing Council (GC) meetings.

The analysis that follows sets out the rules for determining how valid credentials are established in order to certify a country representative as a Governor serving on the GC. The rules apply for all three countries, Côte d'Ivoire, Niger, and Tunisia, though the legal analysis that follows is different in each case.

General principles

Rule 1 of the Rules of Procedure of the Governing Council defines the term "Governor" as *"the person whom a Member has designated as its principal representative at a*

[5] European Court of Human Rights, *Luczak v. Poland*, 2007.

session of the Governing Council and, except as otherwise specified, includes the alternate appointed by that Member when such alternate is acting for the Governor."

Rule 11 of the Rules of Procedure of the Governing Council states as follows:

> "1. The credentials of Governors and alternates shall be issued by, or on behalf of, the Head of State or of Government or by the Minister or Secretary of Foreign Affairs, or by another person notified by the Member so having authority to do so. These credentials and the notifications of the names of advisers shall be submitted to the President at least one week before the opening of the first session the designated persons are to attend. Unless otherwise specified, such credentials and notifications shall be considered valid for subsequent sessions until withdrawn by a notification to the President.
>
> 2. The Bureau shall examine the credentials and, if any member thereof considers it necessary, report thereon to the Governing Council.
>
> 3. Any Governor whose credentials have been challenged may continue to perform his functions on a provisional basis until the Governing Council has given its decision."

These rules must be read bearing in mind that IFAD cannot deal with questions lying outside its mandate, as for example, determining the legitimacy of the government of a Member State.

Rule 11(1) draws attention to the presumption that, if credentials for a particular Governor (and the alternate) have been accepted in the past, allowing them to represent the appointing member at the GC sessions for the previous year(s), and if such representation has not been withdrawn by a notification to the President or objected to by the Governor of another Member State, then that Governor (and the alternate) will be considered legitimate for subsequent sessions of the GC.

This presumption may be rebutted, however, if the credentials are challenged by the other Governors. The rules clearly place the responsibility of examining and reviewing both the credentials and challenges to the credentials on the Bureau (meaning the Chairman and the Vice-Chairmen of the Governing Council). The Bureau is responsible for reporting challenges to the Governing Council, and for processing decisions made by the Council with respect to Governorship credentials.

The Rule further specifies that the presumption does not apply if it is "otherwise specified" that the credentials should not be considered valid beyond the session for which they were issued. Thus, if the credentials include language indicating that they are only valid for a particular session, or set of sessions, then the presumption of ongoing validity will not apply.

2. Specific cases

(a) Côte d'Ivoire

Mr. [name] is listed as Governor for the 32nd session of the GC in 2009. In 2010, at the 33rd session of the GC, Côte d'Ivoire was represented by its alternate Governor, Mr. [name]. We assume that valid credentials were submitted on behalf of both the Governor and the alternate prior to their attending the GC, as required under Rule 11.

As long as no correspondence has been received from Côte d'Ivoire withdrawing the credentials of Mr. [name], or appointing a new Governor, IFAD will be in a different position than the United Nations. Specifically, the United Nations Secretary-General received

a letter from Mr. [name] on December 7 2010, recalling the incumbent Permanent Representative to the United Nations in New York. On December 18 2010, Mr. [name] again wrote to the Secretary-General appointing a new Permanent Representative. At a meeting held on December 22 2010, the United Nations Credentials Committee decided by consensus to accept the updated credentials of the Ivorian delegation. As concerns the remaining Ivorian diplomats appointed under Mr. [name], they will continue to serve, acting for their country in United Nations organs until such time as they are replaced or confirmed by Mr. [name]'s government. Though the course of action followed by the United Nations is of limited relevance at this stage, it may serve as a reference for the future.

Unless correspondence is received between now and (at the latest) one week before the GC's 34th session, either to withdraw the credentials of Mr. [name], or to appoint a new Governor, then the presumption that the appointment is ongoing will apply to Mr. [name] (and to Mr. [name]). Similarly, unless other Governors submit an objection to such appointment, it will be presumed to be ongoing.

In the event that such correspondence is received (from either Mr. [name] or Mr. [name]'s governments), it would fall to the Bureau of the GC to examine the credentials provided and determine whether to accept them or to report challenges to the GC. If a decision is taken to challenge the credentials, the same would need to be reported to the Council. The Council would then need to decide whether or not to accept the credentials, but until such a decision is made, the Governor whose credentials have been presented may perform his or her functions.

(b) Niger

Niger is in a similar situation to Côte d'Ivoire in so far as no correspondence concerning participation at the Council has been received with respect to the upcoming GC. At both the 32nd and 33rd sessions of the GC, the Governor was Mr. [name], and the alternate was Ms. [name]. We assume that valid credentials were submitted on behalf of both the Governor and the alternate prior to their attending the GC, as required under rule 11. As above, unless correspondence or objections are submitted to the contrary, the credentials provided for these individuals will be presumed valid for purposes of participation on the Council. Should Niger submit credentials for a new Governor, however, or should a Member object to these appointments, the same procedure as that described above would need to be followed.

(c) Tunisia

At the 33rd session of the GC, Tunisia was represented by Mr. [name] as Governor and Mr. [name] as alternate. We assume that valid credentials were submitted on behalf of both the Governor and the alternate prior to their attending the GC, as required under rule 11. As above, the presumption that these individual's credentials will continue to be considered valid applies.

However, the Bureau may determine that this presumption should be challenged. Should this happen, such a challenge would need to be reported to the Council, which would then decide whether or not to recognize the previous Governor's credentials. Until such a decision is made, that Governor (and the alternate) may continue to perform his functions.

The foregoing analysis provided for Côte d'Ivoire, Niger, and Tunisia is based on the assumption that the credentials submitted do not contain language limiting the application of the presumption of ongoing validity. Should any of the credentials submitted contain such language, however, the principles of rule 11 would remain unchanged: the credentials submitted for those individuals with a specified limited term would not be considered valid for the upcoming session, which means that, without updated credentials, those individuals would not be permitted to serve as Governors (or alternates). Further, if any new credentials are submitted (at least one week) prior to the GC's 34th session, and if such submissions are challenged, then the Bureau will need to carry out a review and report such challenge(s) to the GC in order to obtain a decision as to how to proceed with respect to each challenged appointment.

2 February 2011

(*d*) Interoffice memorandum concerning the participation of [State] in the Replenishment Consultation

Non-members status not an impediment for participation nor ability to make contributions to the Fund's resources—Rules concerning the participation of non-members at the sessions of the Governing Council—Non-members may participate at the invitation of the President, or the Chairman with council approval—IFAD may receive special contributions from non-members where terms of arrangements are consistent with the provisions of the Agreement Establishing the International Fund for Agricultural Development

I refer to your question during the Governing Council Preparatory Meeting of today concerning the participation of [State] in the sessions of the Consultation on the Ninth Replenishment of the Resources of the Fund and its ability to make commitments for contributing to the Fund's resources.

Since 2007 [State] is no longer a Member State of the Fund, but is seriously considering rejoining the organization. For that purpose it wishes to participate in the upcoming session of the Governing Council and the sessions of the Consultation for the Ninth Replenishment.

For the reasons set out below, this single fact is not an impediment either for [State]'s participation in the sessions of the Consultation of the Ninth Replenishment of the Resources of the Fund, or for its ability to make commitments for contributing to the Fund's resources:

I. Participation in the sessions of the consultation of the Ninth Replenishment

1. Non-members of the Fund, whether States, intergovernmental organizations or non-governmental entities can be invited to participate in the sessions of the Consultation for the Replenishment of the Fund's resources.

2. The Consultation is a committee of the Governing Council, established pursuant to rule 15 of the Rules of Procedure of the Governing Council. According to rule 16, "*unless specifically provided otherwise in these rules or otherwise decided by the Governing Council, these rules shall apply mutatis mutandis to committees and other subsidiary bodies, except*

that they shall not vote but shall submit reports to the Council setting out the views expressed in the body and the reasons therefor."

3. The draft Resolution establishing the Consultation for the Ninth Replenishment of the Fund's resources does not contain any provision excluding the application of any of the Rules of Procedure. Accordingly, if the draft resolution is adopted as it currently stands, the rules concerning the participation of non-members in the sessions of the Governing Council, will apply *mutatis mutandis* to the sessions of the Consultation for the Ninth Replenishment.

4. According to those rules (rules 43.1. and 43.2.), the Governing Council may invite any non-member state, or grouping of States eligible for membership in the Fund, and any international organization, as well as any other entity to designate observers to all or to specified sessions or meetings of the Council. Observers may participate in the proceedings of the Governing Council at the invitation of the Chairman and with the approval of the Council.

5. The same applies to the power to invite non-members, which has been delegated to the President by Governing Council resolutions 77/7 and 78/4. The President exercises this power in consultation with the Executive Board.

II. Ability to make contributions to replenish the fund

6. According to article 4, section 6 of the Agreement Establishing IFAD, the resources of the Fund may be increased by special contributions from non-member States or other sources on such terms and conditions, consistent with article 4, section 5, as shall be approved by the Governing Council on the recommendation of the Executive Board.

7. Pursuant to the aforementioned provision, normally in its replenishment resolutions, the Governing Council expressly addresses the possibility of receiving contributions from non-members for the replenishment of the Fund's resources. Thus the Resolution on the Eighth Replenishment of the Fund's resources (GC Resolution 154/XXXII/Rev.L), stipulates in paragraph 5 (a) that during the replenishment period, the President may accept special contributions from non-member States or other sources to the Fund. In other words, should [State] wish to make a contribution to the Eighth Replenishment, this could be arranged under the forgoing provision.

8. It is anticipated that the Resolution on the Ninth Replenishment of the Fund's resources will contain a provision similar to paragraph 5(a) of GC Resolution 154/XXXII/Rev.L, which will provide the basis for making arrangements for receiving any special contribution from [State] during the replenishment period.

III. Conclusions

9. Further to the criteria adopted for observers in consultation with the Executive Board, the President may invite [State] to participate in the sessions of the Replenishment Consultation.

10. As a non-member, pursuant to the VIIth Replenishment Resolution, [State] will able to enter into arrangements with the President for the purpose of making contributions to the current replenishment period. It is anticipated that a similar provision will be included in the resolution covering the next replenishment period.

8 February 2011

(*e*) Interoffice memorandum to the Executive Management Committee concerning the legal dimensions of establishing a private sector funding facility

FEASIBILITY AND POSSIBLE MODALITIES FOR PROVIDING FINANCING TO THE PRIVATE SECTOR—INSTITUTIONAL LIMITATIONS PURSUANT TO THE AGREEMENT ESTABLISHING THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

BACKGROUND

1. The Independent Office of Evaluations corporate-level evaluation on IFAD's Private Sector and Partnership Strategy* and the Management Response to that evaluation, both make explicit reference to the establishment of a new and separate Private Sector Development Financing Facility that would enable the Fund to provide non-grant (as this is already provided for in the Revised IFAD Policy for Grant Financing) financing to private sector actors, as many other International Finance Institutions (IFI) have done in recent past. As distinct from the other IFIs, however, IFAD would focus on private actors operating within the agricultural development context.

2. This memorandum is intended to supplement these references with a legal analysis of the feasibility of, and possible modalities for, such an intervention. Its contents could either be included in the Management Response or attached to that document as a stand alone legal memorandum.

3. As informational support to the Executive Board (EB) in its determination of whether a Private Sector Development Financing Facility can be agreed to in principle, this memorandum outlines several non-mutually exclusive options for providing financing to the private sector for EB consideration.

4. In exploring these options, it is important to keep in mind institutional limitations to providing direct financing to the private sector, as captured in article 7 of the Agreement Establishing IFAD (the Agreement), which states: "Financing by the Fund shall be provided only to developing States that are Members of the Fund or to intergovernmental organizations in which such Members participate."

OPTIONS

5. *The first option* would be to partner with other international organizations (via a co-financing or a grant/loan—if permitted by the partner institution) whose mandate contemplates direct financing to the private sector, such as the IFC, or the branches of the African Development Bank and of other IFIs that deal with private sector. Such cooperation would be in accordance with article 7 of the Agreement on the Use of Resources and Conditions of Financing.

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* International Fund for Agricultural Development, document 2005/84/R.4/Rev.1. Available from http://www.ifad.org/gbdocs/eb/84/e/EB-2005–84-R-4-REV-1.pdf (accessed on 31 December 2011).

6. This approach would preserve the principle of speciality that governs the establishment of the different international institutions, determines their respective mandates, and offers a framework for inter-institutional collaboration. It further represents an explicit application of article 8 of the Agreement, which requires that IFAD cooperate closely with other international organizations, while observing their respective mandates. Pursuing this option requires obtaining EB approval but no amendment to the Agreement. Such a course of action would of course require a detailed agreement with the IFC or other partner institution in order to clarify targeting objectives, due diligence criteria, geographical distribution of funds criteria, and so on, in order to ensure that IFAD's institutional priorities are not compromised.

7. *A second option* would be to establish a trust, funded by third parties (Members States, non-members States, non-state actors, etc), the moneys of which would be used to provide direct financing to the private sector. This trust would be established by IFAD and IFAD would be trustee under the Agreement. Such an approach would not require amending the Agreement. Note too that the authority to establish trusts has been delegated to the EB by the Governing Council.

8. *A third option* would mirror the second, but involve IFAD's own resources instead of third party resources. To date there is only one precedent for IFAD resources being deployed in a way that does not comply with the terms of the Agreement without entailing an amendment to the Agreement: the establishment of a Fund for Gaza and the West Bank. In that instance, the Governing Council applied a waiver to the Agreement in order to use IFAD's resources to fund activities in non-member State territories. However, this decision was made on a one-time basis and under very specific circumstances of international concern (Oslo Accords). We doubt that such an option would be applicable in the present case. In other words, if IFAD resources were to be used to finance a trust on an ongoing basis, an amendment to the Agreement would be required.

In the process of weighing any option requiring an amendment to the Agreement, we are invited to consider certain questions concerning IFAD's status as a specialized agency. Specifically, what is the functional necessity served by such a facility and amendment? Do other specialized agencies or agencies within the United Nations system have overlapping objectives and means of attaining them? If it is determined that cooperation alone would not be an adequate mechanism for achieving IFAD's objective of increasing private sector engagement in agricultural development, then the arguments in support of establishing an IFAD-funded trust and amending the Agreement would be greatly strengthened.

9. *The fourth option* would be to set up an IFAD subsidiary, which would amount to creating a private sector branch of our operations, as a completely new organization (e.g. as the World Bank has done with the IFC). This process would require the Governing Council to adopt a charter for the subsidiary and to invite members to adhere to it. Establishing a subsidiary that would supply direct financing to the private sector, and to which governments (Member States and / or non-member States) could adhere, would not require an amendment to the Agreement.

2 May 2011

(*f*) Legal opinion concerning the ranking of the lending terms applied to IFAD financing

System of ranking in lending terms as established by the Governing Council—Comparison between loans on highly concessional terms and loans on intermediate terms—Executive board excercised its delegated authority in conformity with the system of concessionality—Governing Council has discretion to determine as a policy matter the minimum service charge rate

I. The issues

1. This opinion is issued further to the question raised by the representative for Japan at the 118th meeting of the Audit Committee on 3 May 2011 concerning the fact that—as stated in the 2010 consolidated financial statements (AC 2011/118/R.3)—during 2010 the interest rate applied to intermediate loans was lower than the service charge applied to highly concessional loans. During that period, the interest rate applied to intermediate loans was 0.46 per cent in the first semester and 0.55 per cent in the second semester. As per paragraph 32(a) of the Lending Policies and Criteria, throughout that period the service charge applied to highly concessional loans was three fourths (0.75) of one per cent per annum. Specifically, the question posed is whether the yearly service charge of 0.75 per cent should be considered as the minimum level for interest rates applied by the Fund to its loans.

II. Analysis

2. According to paragraph 31 of the Lending Policies and Criteria adopted by the Governing Council, the Fund shall provide loans to developing Member States upon highly concessional, intermediate and ordinary terms for approved projects and programmes. With regard to highly concessional loans, paragraph 32(a) of the Lending Policies and Criteria prescribes that these shall be free of interest but shall bear a service charge of 0.75 per cent per annum. With respect to loans on intermediate terms, paragraph 32(b) provides that these will be subject on an annual base to an interest rate equivalent of 50 per cent of the interest rates charged on ordinary loans. Given that during 2010 this rate stood at 0.92 per cent and 1.10 per cent during the first and second semester respectively, unqualified application of the foregoing rule implied that, in 2010, the interest rate applied to intermediate loans was 0.46 per cent in the first semester and 0.55 per cent in the second semester. As a result, the cost of borrowing from the Fund during 2010 for intermediate borrowers was less than the cost of borrowing for Member States eligible for loans on highly concessional terms.

3. The foregoing situation poses the question whether, given the levels of concessionality established by the Governing Council, the Executive Board is authorized to approve loans on intermediate terms that are more favourable than highly concessional loans.

4. To answer this question, it needs to be recalled that the system of ranking in lending terms established by the Governing Council is premised on the idea that the terms and conditions applicable for lower-income countries should reflect the highest level of concessionality. This is important because section 7 of the By-Laws for the Conduct of the Business of IFAD clearly states that "[T]he Board shall not take any action pursuant

to powers delegated to it by the Governing Council that is inconsistent with any decision of the Council."

5. It will be recalled that paragraph 33(b) of the Lending Policies and Criteria stipulates that the Executive Board shall:

> "decide, annually, the rates of interest to be applied, respectively, to loans on intermediate and ordinary terms. For that purpose, it shall review annually the rates of interest applicable to loans on intermediate and ordinary terms and revise such rates, if necessary, on the basis of the reference rate of interest in effect on 1 July of each year."

6. Pursuant to this delegated authority, in September 1995, the fifty-fifth session of the Executive Board authorized the President to establish the IFAD rates of interest for the following year without prior Board approval, but on the understanding that the Board would be notified of the rates so established.[1] Rates were established routinely on the basis of the July-December variable interest rates of the International Bank for Reconstruction and Development (IBRD). In 2007, the IBRD's Executive Board approved a significant simplification and reduction in IBRD loan and guarantee pricing by setting the IBRD variable interest rate based on the London Interbank Offered Rate (LIBOR). In September 2008, the Executive Board was informed that the President had approved the use of the special drawing right LIBOR 12-month composite rate as the reference interest rate in 2009 for IFAD loans on intermediate and ordinary terms, rather than the IBRD published currency pool rate—the rate that had been applied until that time. To bring IFAD rates closer to those offered by the market and the other multilateral financial institutions, acting under the above-mentioned delegation, the Executive Board decided at its ninety-seventh session (14 to 15 September 2009) that the periodicity of the update of the IFAD reference interest rate be revised from 12 to six months. It decided that the applicable interest rate for each six-monthly period will be based on the SDR LIBOR six-month composite rate in force on day one of the six-monthly period.[2]

7. By virtue of the application of this decision against the background of market developments during 2009, the situation arose as described in the introduction of this opinion. From a legal standpoint it would appear that in order to assess whether this situation is in conformity with the system of concessionality adopted by the Governing Council, the following factors need to be considered:

(a) Interest rates and service charges are distinct concepts that cannot be compared in all respects;

(b) The fact that no interest rate is charged on highly concessional loans, only a fixed service charge;

(c) Highly concessional loans have a longer maturity period, including a grace period of 10 years.

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[1] International Fund for Agricultural Development, document EB 95/55/R.45.

[2] *Ibid*., document EB 2009/97/R.46/Rev.2. Available from http://www.ifad.org/gbdocs/eb/97/e/EB-2009–97-R-46-Rev-2.pdf (accessed on 31 December 2011). For the sake of completeness it is noted that in its resolution 158/XXXIII on the Revision of the Lending Policies and Criteria, the Governing Council authorized the Executive Board to introduce hardened terms. That is of no consequence for the present analysis and will not be further discussed.

8. Taken together these factors lead to a situation that on balance amounts to lower borrowing costs for highly concessional borrowers, despite any temporary situation—as that occurring during 2010. It cannot be said that the Executive Board exercised its delegated authority in a matter that is inconsistent with the system of concessionality established by the Governing Council.

9. It should be noted that the eligibility criteria for intermediate loans—having a GNP per capita of between US$806 and US$1,305 in 1992 prices[3] —does not mean that these loans go to middle-income countries. The recipients of loans on intermediate terms are developing Member States with low incomes and significant need. It is therefore appropriate that the terms applicable to loans on intermediate terms be only marginally less favourable than those applicable to highly concessional loans.

10. A direct comparison between loans on highly concessional and loans on intermediate terms demonstrates that the terms for highly concessional loans are indeed more favourable than those in the intermediate category. Highly concessional loans have a maturity period of 40 years instead of 20 years. The applicable grace period is 10 years instead of five years. And, most importantly, the applicable service charge of 0.75 per cent is fixed throughout the 40-year life of the loan, while the intermediate interest rate is floating, and changes every six months.

11. The interest rates applied by IFAD today are at unprecedentedly low historical levels. It is almost certain that these rates will increase in the near future. Sooner or later, the rate applicable to intermediate loans will exceed 0.75 per cent, and it could go much higher. On the other hand, the Member States that borrow at highly concessional rates can make their long-term plans, secure in the knowledge that the service charge they pay will never increase.

12. As to the specific question of whether the service charge of 0.75 per cent yearly should be considered as the minimum level for interest rates applied by the Fund to its loans, it is noted that while the answer to that question is negative, the Executive Board would be free to decide as a policy matter that it would allow the interest rate applicable to intermediate loans to be less than 0.75 per cent per annum. However, such a policy decision would imply that, by virtue of paragraph 32(b) of the Lending Policies and Criteria, the minimum interest rate applicable to loans on ordinary terms would be 1.5 per cent on a yearly base.

III. Conclusions

13. Based on the foregoing, the following conclusions are warranted:

- The fact that the Governing Council decided that a service charge of 0.75 per cent per annum shall apply to loans on highly concessional terms does not imply that the interest rate applicable to loans on intermediate terms cannot under any circumstances be lower than 0.75 per cent on a yearly base.
- Given the cumulative effect of all the elements that determine the degree of concessionality of loans (i.e. service charge, interest rate, grace period and maturity), as long as on balance the treatment received by highly concessional borrowers

[3] *Ibid*., Lending Policies and Criteria, para. 31(a). Available from http://www.ifad.org/pub/basic/lending/e/02polcri.pdf (accessed on 31 December 2011).

is more favourable than that received by borrowers on intermediate terms, then it cannot be said that the Executive Board exercised its delegated authority in a matter that is inconsistent with the system of concessionality established by the Governing Council.

– If for policy reasons the Executive Board decides not to allow the interest rate applicable to intermediate loans to be less than 0.75 per cent per annum, this would imply that the minimum interest rate applicable to loans on ordinary terms would necessarily be 1.5 per cent on a yearly base.

10 May 2011

(*g*) Legal advice concerning the modalities of [State]'s reengagement with IFAD

MEMBERSHIP PROCEDURES AS STIPULATED IN THE AGREEMENT ESTABLISHING THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT—MEMBERSHIP AND CONTRIBUTION CATEGORIES—CONTRIBUTION TO IFAD'S REPLENISHMENT FUND AND ITS IMPACT ON THE CREATION OF MEMBERSHIP AND CONTRIBUTION VOTES

ISSUES

1. While [State] is in the process of evaluating a future re-engagement with IFAD, LEG has been requested to provide indications on two issues regarding the modalities of the reengagement, which are:

(i) May [State] join IFAD through the procedure of article 13.1 (c) of the Agreement Establishing IFAD or should a special procedure for rejoining the Fund be considered?

(ii) At what point in time would a pledge or deposit of an instrument of contribution by [State] be considered towards the creation and accrual of membership and contribution votes?

EXECUTIVE SUMMARY

– [State] may join IFAD through the normal procedure of article 13.1 (c) by depositing an instrument of accession after approval of the membership by the Governing Council.

– [State] could provide initial, special or replenishment[1] contributions (Eighth or Ninth Replenishments).

– Contribution to the Eight Replenishment will impact on the redistribution of contribution votes that will occur if [State] joins IFAD.

– Contributions to the Ninth Replenishment will impact on the creation of membership and contribution votes, upon the entry into effect of the resolution for the Ninth Replenishment.

[1] Replenishment contributions are defined in article 4, section 3 of the Agreement Establishing International Fund for Agricultural Development as additional contributions.

Analysis

I. Membership—Background

2. Article 3.2 of the Agreement Establishing IFAD (the Agreement), creates two categories of Members; Original and Non-Original Members.

3. Original Members are the States listed in Schedule I of the Agreement that became parties to the Agreement through the procedure of article 13.1(b). States had to deposit an instrument of ratification, acceptance, approval, or accession within one year after the entry into force of the Agreement.

4. Non-Original Members are States that may become parties to the Agreement through the procedure of article 13.1(c). This procedure is used by States not listed in Schedule I, as well as by States listed in Schedule I that are precluded from using the procedure in article 13.1 (b) because they haven't become parties to the Agreement within one year after its entry into force.

5. Although [State] is listed in Schedule I as an original member, if it wishes to rejoin IFAD, it will find itself in the same situation as a non-original member due to its withdrawal from the Fund. As there is no provision in the Agreement creating a specific status for returning members, [State] will need to follow the procedure set forth in of article 13.1(c) of the Agreement, by depositing an instrument of accession after approval by the Governing Council of its request for membership.

6. In order for its membership to become effective at the 35th session of the Governing Council, [State] should follow the steps identified in the timeline prepared by SEC.

II. Votes—Membership and contribution

7. Membership votes are created according to the amount contributed in each replenishment and are distributed equally among all Member States.

8. Contribution to the resources of the Fund is divided in three main categories presented in article 4 of the Agreement Establishing IFAD: initial contributions, replenishment (additional) contributions and special contributions.

Initial contributions are pledged by new members in their instrument of ratification, acceptance, approval or accession and, since the amendment of article 4 of the Agreement by resolution 86/XVIII of the Governing Council, are no longer mandatory upon joining IFAD. As they are not part of the replenishments, initial contributions are not taken into account for the creation and distribution of the replenishment votes.

Additional contributions (i.e. replenishment) are pledged by Member States through an instrument of contribution, for the replenishments. The total amount received in additional contributions determines the number of replenishment votes created.[2] Members providing additional contributions are entitled to a corresponding share of the contribution votes created.[3]

Special contributions are resources provided to the Fund by non-member States. For the Eighth Replenishment, the President was authorized, by the Governing Council,

[2] Agreement Establishing the International Fund for Agricultural Development, article 6, section 3 (a) (ii).

[3] *Ibid.*, article 6, section 3 (a) (ii) (B).

to accept such contributions. [4] Special contributions are not taken into account for the creation of replenishment votes and do not entitle the contributing non-member State to contribution votes if it eventually becomes a member of IFAD.

9. In view of the above, [State]'s eventual contributions would have the following impact on votes:

10. If it decides to become a member of IFAD, [State] could pledge an initial contribution in its instrument of accession. This contribution would also have no influence on the creation and distribution of the votes.

11. Regardless of its decision on the initial contribution, [State] may provide contributions to the Eighth or Ninth Replenishment, or to both, by depositing an instrument of contribution at any moment after its membership is approved by the Governing Council.

12. If [State] opts to contribute to the Eighth Replenishment, the resources provided would not create new contribution votes.[5] [State] would however be entitled to receive a corresponding share of the contribution votes when those will be redistributed upon its admission as a Member.[6] [State] should deposit the instrument of contribution simultaneously to the deposition of its instrument of accession in order for the contribution to be taken into account for the redistribution of contribution votes.

13. As to the Ninth Replenishment, and assuming the final version of the Resolution is adopted,[7] [State] could deposit an instrument of contribution that would take effect on the effective date of the Replenishment.[8] The contribution would be taken into account for the creation and distribution of votes that will enter into effect six months after the adoption of the Replenishment Resolution.[9]

14. While it is not a Member or if it doesn't decide to join IFAD, [State] may always provide a special contribution to the Eighth Replenishment. Such a contribution would have no impact on the voting rights.

19 May 2011

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[4] International Fund for Agricultural Development, document GC32/Resolutions 154/XXXII/Rev.1. Available from http://www.ifad.org/gbdocs/gc/32/e/GC-2009–32-Resolution-154-XXXII-Rev-1.pdf (accessed on 31 December 2011). See section II 5 (b) of Resolution 154/XXXII on the Eight Replenishment of IFAD Resources.

[5] To have an impact on the creation of votes, instruments of contribution to the Eight Replenishment had to be deposited at the latest six months after the adoption of the Replenishment Resolution by the Governing Council, as stated in Section IV 20 (c) of the Resolution 154/XXXII on the Eight Replenishment of IFAD Resources.

[6] Agreement Establishing the International Fund for Agricultural Development, article 6, section 3(a) (iii).

[7] As the Governing Council has not yet adopted the Resolution for this Replenishment, LEG can only provide indications on the effect of contributions to the Ninth Replenishment based on the draft version of the Resolution, which might be modified before its adoption.

[8] International Fund for Agricultural Development, document REPL.IX/4/R.3/Rev.1. Available from http://www.ifad.org/gbdocs/repl/9/iv/e/REPL-IX-4-R-3-Rev-4.pdf (accessed on 31 December 2011). See section V (b) of the Draft Resolution on the Ninth Replenishment of IFAD's Resources.

[9] *Ibid*. See section V (c) of the Draft Resolution on the Ninth Replenishment of IFAD's resources

(*h*) Legal advice concerning the implications of the partition of the Republic of Sudan*

IMPLICATIONS ON MEMBERSHIP, VOTING RIGHTS, ASSETS AND LIABILITIES OF TWO STATES THAT WILL RESULT FROM SECESSION—IMPACT OF SOUTHERN SUDAN SECESSION AND ITS RELATION TO IFAD—POSITION OF THE INTERNATIONAL COMMUNITY REGARDING THE DISSOLUTION OF THE STATE OF SUDAN OR ITS CONTINUATION BY NORTHERN SUDAN—IFAD TO EXERCISE GOOD FAITH OBLIGATION AND ALLOW CONTINUATION OF ONGOING PROJECTS UNTIL NEW STATE(S) OBTAIN MEMBERSHIP OR EXPRESS THEIR INTENTION TO JOIN THE ORGANIZATION

ISSUE

1. Following a referendum on secession held in January 2011, Southern Sudan will become an independent State on 9 July 2011. As the authorities of Southern Sudan have already approached IFAD for an eventual membership, LEG has been requested to provide advice on the issues relating to the membership of the two States that will result from the secession.[1] Background information is provided in the attached document.

EXECUTIVE SUMMARY

- If Southern Sudan wants to join IFAD, it will need to apply for membership. If the Republic of Sudan is dissolved, Northern Sudan will also need to apply for membership. Both States will be entitled to the same amount of membership votes as all other members if they join IFAD.
- Northern Sudan will keep the contribution votes of Sudan if it continues the Republic of Sudan's membership.
- If the membership of the Republic of Sudan is continued by Northern Sudan, the latter will keep all assets and liabilities associated with the financing agreements concluded with IFAD, with the exception of the Southern Sudan Livelihood Development Project, which should be transferred to Southern Sudan if it joins IFAD. If Northern Sudan does not continue the Republic of Sudan's membership, IFAD will have to negotiate the separation of the assets and liabilities.
- IFAD should allow the continuation of the ongoing projects until the new State(s) obtain membership, as they officially express their intention to join the organisation.
- The impact of Southern Sudan secession with regard to its relation with IFAD will depend mainly of the position of the international community regarding the dissolution of the State of Sudan or its continuation by Northern Sudan.

* The State designations do not consistently follow the official designations recognized by the United Nations. The Republic of South Sudan formally seceded from Sudan on 9 July 2011 and was admitted as a new Member State by the United Nations General Assembly on 14 July 2011.

[1] LEG has been informed of the impending creation of the State of Southern Sudan and of its authorities' intention to join IFAD through a memo from SEC 15 April 2011.

Analysis

I. State continuity and succession

2. The consequences of a State partition, in its relation with IFAD, raise issues of State continuity and succession. The Republic of Sudan is an Original Member of IFAD and has concluded financing agreements with the organisation. The implications of the independence of Southern Sudan depends mainly on whether the Republic of Sudan will continue to exist after 9 July 2011.

3. Two possible scenarios can result from the partition of Sudan. The first one is that the Republic of Sudan will be dissolved, and two new States will be created (Southern Sudan and Northern Sudan). The second scenario is that Northern Sudan will be continuing the statehood of the Republic of Sudan and only Southern Sudan will be considered as a new State.

4. The continuation or dissolution of a State depends on objective factors like the control over former territory and population, but also mainly, as evidenced in the case of Yugoslavia and the former Union of Soviet Socialist Republics, on the recognition by the international community. In the case of Sudan, even if the objective factors and the position already announced by the International Monetary Fund (IMF) seems to favour a continuation, IFAD will have to take into consideration the position of the international community before adopting a final decision based on its own legal framework. The different issues raised by the partition of Sudan will therefore be addressed considering both scenarios.

5. It should also be noted that, due to article 3.1 (a) of the Agreement Establishing IFAD, the decision of the United Nations, of one of its specialised agencies or of the International Atomic Energy Agency to grant membership to any new State resulting from the partition of Sudan will automatically render that State eligible for IFAD membership.

II. Membership

6. As there is no special provision in the Agreement Establishing IFAD regarding continuing and succeeding States, the procedure set out in article 13, section 1 of the Agreement is the only option by which a new State may obtain membership. In the case of Eritrea, Timor-Leste and of the States resulting from the dissolution of Yugoslavia, IFAD has required new States to join the organisation through the general procedure of article 13 even if they used to be part of a Member State.[2] Consequently, if the Republic of Sudan is considered to be dissolved on 9 July 2011, the two new States that will be created will need to apply for IFAD membership. If, on the other hand, the Republic of Sudan is continued by Northern Sudan, only the new State of Southern Sudan will have to go through the accession procedure of article 13.

III. Voting Rights

7. Since the voting rights currently held by Sudan are linked to its membership, they will be equally affected by the partition. If Northern Sudan continues Sudan's membership,

[2] Resolution 129/XXVI of the Governing Council (Democratic Republic of Timor-Leste) and Resolution 78/XVII of the Governing Council (Eritrea, Bosnia Herzegovina, Croatia and The Former Yugoslav Republic of Macedonia).

it will be entitled to keep those votes. If the State is dissolved and the two new States apply for membership, each one will receive the share of membership votes it is entitled to as a new member. The contribution votes currently held by Sudan will however be redistributed among all members according to article 6, section 3 of the Agreement Establishing IFAD, as it was done when Yugoslavia was removed from the list of Member States.

III. Assets and liabilities

8. If Northern Sudan continues the membership regardless of the separation of Southern Sudan, it will remain the member who concluded the financing agreements with IFAD, and will assume responsibility towards IFAD for the debts and other obligations. The situation would however be different for the Southern Sudan Livelihood Development Project grant agreement, which was signed by Southern Sudan authorities as the authorised representative of the Republic of Sudan. In addition to its specific location, this agreement has the particularity of having direct connections with the government of Southern Sudan, which was responsible for the negotiation and conclusion of the agreement, as well as for the implementation of the project. The Agreement could therefore qualify as a localized agreement, which means that the assets and liabilities related to it should be automatically transferred to Southern Sudan, if it joins IFAD membership.

9. If the opposite scenario occurs and the Republic of Sudan is dissolved, the Member State with which the Fund has concluded its financing agreement would cease to exist. Both succeeding States would remain responsible towards IFAD for a share of the liabilities. The share of each State would have to be negotiated between IFAD and the two States. The allocation could be done using the final beneficiary rule, as applied by the World Bank, according to which the loans, and the assets associated with them, are attributed to the State in which the resources benefited.[3] Such an allocation would however result in Southern Sudan receiving a very limited share of the assets and liabilities, since nearly all of the projects were conducted in Northern Sudan's territory (see background information).

IV. Consequences for ongoing projects

10. Article 7, section 1 (b) of the Agreement Establishing IFAD clearly states that financing by the Fund can only be provided to developing States that are Members of the organisation. This requirement could be problematic for the ongoing projects after the independence of Southern Sudan. If the State of Sudan is dissolved, all ongoing projects in Sudan will then take place in States that are not members of the IFAD. If Northern Sudan continues the membership, the same problem will affect the Southern Sudan Livelihood Development Project.

11. A strict application of the rule of article 7 would result either in the cancellation of the ongoing projects or their suspension for the period between the independence and the future accession to membership. The suspension or cancellation could jeopardize the achievement of the development objectives and the optimal use of the resources already engaged. A decision by IFAD to take such action regardless of the new States intention to join the organisation would be contrary to the purpose of the Agreement Establishing IFAD.

[3] Anne Stanic, "Financial Aspects of State Succession: The Case of Yugoslavia" *European Journal of International Law*, vol. 12, No. 751 (2001), p. 760.

12. IFAD's general obligation of good faith therefore requires for the Fund to first evaluate the State's intention to become a member of IFAD. If the State's authorities do not demonstrate such an intention, the Fund should cancel the financing agreement. If, however, the new State officially expresses its will to become a member and engage the necessary procedures, it would be advisable for IFAD to allow the continuation of the project activities foreseen in the financing agreements until the accession to membership

Background information

- The Republic of Sudan is an Original Member of IFAD.
- Since its creation, IFAD has financed 19 projects or programmes in Sudan. Out of those, 17 were located exclusively in the northern part of Sudan while only two were located in the southern part. The only loan agreement for a project in Southern Sudan's territory was concluded in 1979. The other agreement, more recent, was for a Debt Sustainability Fund grant.
- There are actually eight ongoing projects with Sudan. Seven of these projects are located exclusively in the territory of Northern Sudan. The remaining ongoing project, the Southern Sudan Livelihoods Development Project, is being implemented only in Southern Sudan. For the negotiation and conclusion of the agreement, Sudan was represented by the Government of Southern Sudan, which is empowered, under the National Interim Constitution, to sign agreements for projects that are to be carried out in Southern Sudan's territory. Consequently, the obligations regarding the implementation of the project could be attributed to the Government of Southern Sudan.
- IMF has announced, on the 20 April 2011, that it has received an application for membership by Southern Sudan. The organisation also announced that Sudan (Northern Sudan) will remain a member of IMF, retaining all of its quotas, assets and liabilities.
- The Republic of Sudan presently holds 9.76 votes, 0.373 of which are contribution votes.

20 May 2011

(*i*) Legal advice regarding reporting obligations for [State]

Reporting obligations and frequency of reporting duties under the Agreement Establishing the International Fund for Agricultural Development—Member States have no reporting obligations per se and only need to gather and produce information upon the request of IFAD—Overview of Member State's mandatory reporting duties—Member States have no duty to report where there is no indication of an agreement with IFAD

Issue

The question presented is in relation to the reporting obligations of the [State] Government. As the [State] is a member of IFAD, the issue pertains to whether there are any reporting obligations under the IFAD agreement, and if so, the frequency of said reporting.

Preliminary research

As to date, there are no existing agreements between IFAD and the [State]. This has been confirmed by our internal Controller and Financial Services (CFS) department. Thus, absent an agreement, it seems that the [State] would have no duty to report.

Reporting obligations under the IFAD Agreement

If an agreement was present, [State] would indeed have several reporting obligations. These obligations are found in the document entitled, "General Conditions for Agricultural Development Financing." Most of the "reporting" language contained in this document specifies that the borrower should only need to gather and produce information "upon the request of IFAD." Therefore, in those instances, the borrower would have no obligation per se. However, there are some mandatory reporting duties, specifically (noted in italics):

1. *Section 8.02. Monitoring of Project Implementation—The Lead Project Agency shall*:

(*b*) during the Project Implementation Period, gather all data and other relevant information (including any and all information requested by the Fund) necessary to monitor the progress of the implementation of the Project and the achievement of its objectives; and

(*c*) during the Project Implementation Period and for at least ten (10) years thereafter, adequately store such information, and, promptly upon request, make such information available to the Fund and its representatives and agents.

2. *Section 8.04. Completion Report*

As promptly as possible after the Project Completion Date but in any event no later than the Financing Closing Date, the Borrower/Recipient shall furnish to the Fund a report on the overall implementation of the Project, in such form and substance as may be specified in the Financing Agreement or as the Fund shall reasonably request. At a minimum, such report shall address (i) the costs and benefits of the Project, (ii) the achievement of its objectives, (iii) the performance by the Borrower/Recipient, the Project Parties, the Fund of their respective obligations under the Agreement and (iv) lessons learned from the foregoing.

3. *Section 9.02. Financial Statements*

The Borrower/Recipient shall deliver to the Fund detailed financial statements of the operations, resources and expenditures related to the Project for each fiscal year prepared in accordance with standards and procedures acceptable to the Fund and deliver such financial statements to the Fund within four (4) months of the end of each fiscal year.

4. *Section 9.03. Audit of Accounts—The Borrower/Recipient shall*:

(*a*) each fiscal year, have the accounts relating to the Project audited in accordance with auditing standards acceptable to the Fund and the Fund's Guidelines on Project Audits (for Borrowers' Use) by independent auditors acceptable to the Fund;

(*b*) within six (6) months of the end of each fiscal year, furnish to the Fund a certified copy of the audit report. The Borrower/Recipient shall submit to the Fund the reply to the management letter of the auditors within one month of receipt thereof;

Conclusion

After finding no indication of an agreement between IFAD and the [State], it appears that they would not have any reporting obligations. However, the provisions above provide a reference point for mandatory duties by the borrower in the event an agreement is executed.

15 July 2011

(*j*) Legal advice regarding [State]'s complementary contribution to the Eighth Replenishment

Instrument of contribution obligates Member States to submit replenishment contribution to the resources of the Fund—Non-payment of complementary contribution does not constitute non-compliance where there is no evidence of a firm and unconditional commitment to contribute—Supplementary funds as a legally sustainable alternative

On 21 September I was visited by [name], the [State] Executive Board Representative, who informed me that [State] would not be making a complementary contribution to the Eighth Replenishment and offered a legal interpretation to explain that this would not constitute a non-compliance with any undertaking. Having reviewed the arguments brought forward, it is my opinion that indeed [State] cannot be reproached for having recanted on a commitment. The following analysis explains this conclusion:

I. Background

Since the Fourth Replenishment, the financial contributions of the Government of [State][1] to the Programme are considered to be complementary contributions within IFAD. Pursuant to section 1 (ii) of article 4 of the Agreement Establishing IFAD and the relevant Replenishment Resolutions, complementary contributions are considered to be a subcategory of additional contributions and they are made within a specified replenishment period unless otherwise approved by the President.

II. [State]'s complementary contribution to the eighth replenishment

With respect to the Eighth Replenishment of IFAD's resources, [State] announced during the Consultation that its pledge includes 21 million euro to regular resources and also announced its intention to make a complementary contribution, at least as large as that made to the Seventh Replenishment (15,6 million euro), subject to parliamentary approval. This intention was reflected in the Replenishment Resolution 154/XXXIII (2009).

On 27 August 2011, [State] deposited an instrument of contribution (IOC) converting its pledge of 21 million commitment for core contributions into an obligation to contribute. However, the pledge regarding complementary contributions, although reiterated in its prin-

[1] By agreement between the [State] Government and IFAD dated 10 May 1984, as amended on 14 February 1995, the Programme was created in order to provide financial support for IFAD's agricultural development projects, with a special emphasis on social investments in primary health care, nutrition, sanitation, domestic water supply and capacity-building.

ciple, was not subject to a firm commitment, indeed no amount and no period of payments was specified, and it was made subject to the condition of budgetary appropriation.

In 2011, the Government of [State] passed a new law which provides for the allocation of development aid resources to projects and no longer to an organization, as has been done in the past. It means that international organizations and other entities should make a bid for obtaining resources based on project proposals. Therefore, [State] informed IFAD that parliamentary approval cannot be obtained due to this change and that [State] is not in a position to honour its complementary contribution pledge.

During the aforementioned meeting, [name] proposed to cover the financing of the ongoing projects, which amounts to approximately 7 313 193 euro, by way of supplementary funds instead of complementary contributions.

III. Legal issues

Resolution 154/XXXIII (2009) 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 ("IOC") confirming the member's commitment to contribute to IFAD's resources. The Replenishment Resolution requires that any IOC shall specify:

(*a*) The indication of whether the payment will be in a single sum, in two or more than three instalments;

(*b*) The specification of the currency of payment; and

(*c*) the payment must be made either in cash, the deposit of a non-negotiable, irrevocable non-interest bearing promissory note or other similar obligations of the Member, encashable at par on demand.

Such IOC converts pledges made during the Consultation into a binding legal commitment towards the Fund. Accordingly, the Fund acquires an enforceable right to receive the replenishment contribution committed for its benefit once an IOC has been deposited with the Fund and if the criteria mentioned above are satisfied.[2]

With respect to the core contributions, [State] IOC complies with the Resolution requirements, however, there is no evidence of a firm and unconditional commitment to contribute to the Fund regarding complementary contribution since the requirements set forth in the Replenishment Resolution (Governing Council Resolution 154/XXXIII, 2009) are not met. Under these circumstances, it cannot be asserted that [State] has no unfulfilled financial obligation to the Fund.

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[2] According to IFAD policies and procedures, when instalments are due for more than 24 months an accounting provision would be established. Note also that those Member States against whom an accounting provision exists with respect to the payment of their contribution to the resources of the Fund shall be excluded from those members eligible for election or appointment to the Executive Board. This would also have some implication on your country voting rights. Moreover, the Governing Council may decide to suspend the membership of such Member State. Finally, it is important to note that while a country is in contribution arrears the President of the Fund refrains from submitting the financing of projects or programmes in that country for the approval of the Executive Board.

IV. Requested decision

In view of the foregoing, the proposal made by the [State] Government through the channel of its Permanent Representative to the United Nations Agencies in Rome, [. . .], to cover the financing of current ongoing projects, resorting to supplementary funds, is legally sustainable. This new arrangement should result in a supplementary funds agreement.

If the Executive Management Committee agrees with the foregoing, LEG will discuss with the [State] Permanent Representative the appropriate steps to be taken to arrive at a new agreement for supplementary funds.

23 September 2011

3. United Nations Industrial Development Organization

(Submitted by the Legal Adviser of the United Nations Industrial Development Organization)

(*a*) Interoffice memorandum to the Unit Chief and the Deputy to the Director, Financial Management of Technical Cooperation Unit regarding the payment of the uniform social tax and national income tax on behalf of United Nations Industrial Development Organization (UNIDO) national experts in [State]

UNIDO monies cannot be used for the purposes of national social security contributions unless there is a contractual or other legal obligation to do so—Application of the rules of interpretation under international law—UNIDO and the Government should jointly ensure that project budget is adequate to cover social security contributions—UNIDO has responsibility to ensure that Special Service Agreements are consistent with the Agreement Establishing the Centre and cannot cite the former as a basis for refusing to pay social security contributions—Consistency between agreements with regards to the practice of paying income tax

1. This is with reference to your email of 22 February 2011 concerning certain payments made to the [State] authorities in respect of national experts employed at the United Nations Industrial Development Organization (UNIDO) Centre [name] in [city]. The two questions you have addressed to this Office are whether the Centre is:

(1) "legally obliged to pay the uniform social tax (for pension) monthly for each national expert with whom it has a contract"; and

(2) "obliged to make payment of income tax instead of the national expert".

2. I answer both questions in the affirmative for the following reasons.

Background

3. The activities of the [Centre] are governed by the *Agreement between the Government of the [State] and the United Nations Industrial Development Organization on the Activities of the UNIDO Centre [name] in the [State]*, which was concluded at Vienna on

18 December 1992. The [Centre] is funded by the Government of the [State] pursuant to a Trust Fund Agreement dated 16 December 2008.

4. From the information accompanying your email it appears that the [Centre] has a practice of budgeting for and paying the uniform social tax in respect of experts employed at the Centre who hold UNIDO special service agreements as national experts or experts on mission. In addition, the Centre deducts national income tax from each expert's salary and remits the deducted amount to the tax authorities. This practice has been questioned by the allotment holder at Headquarters (see the email dated 21 February 2011 from Ms. [Name]) on the basis that the special service agreements of the national experts provide, in paragraph 7, that,

> The national expert shall not be exempt from taxation by virtue of this agreement and is solely responsible for taxes levied on the monies received under this agreement.[1]

5. In his email of 7 February 2011 to Headquarters, the Director of the Centre states that the problem relating to social security payments and income taxes for national experts arises from contradictions between the agreement establishing the Centre, on the one hand, and UNIDO rules and practices, on the other. The Director writes that,

> In order to fulfil legal requirements the [Centre] [city] is registered in the [State] Pension Fund and Tax Inspection and every month effects payment to the Pension Fund . . . for the national experts—staff members of the [Centre] [city]. Moreover, according to [State] legislation, the employer is obliged monthly [to] effect payment of income tax (13 per cent), which is previously deducted from the staff salary.
>
> According to legislation in this particular case the [Centre] [city] is considered as an employer, i.e., an organization which pays salary to the staff and effects payments to pension fund for its staff.
>
> . . . The same regulation applies to all embassies and diplomatic missions, which recruit local staff.
>
> *Question 1: Is UNIDO legally obliged to pay the monthly uniform social tax for each national expert employed at the Centre?*

6. As a rule, UNIDO monies cannot be used for the purposes of national social security contributions unless there is a contractual or other legal obligation to do so. In the present case, there are two possible sources of such a legal obligation in the [State], which are considered below.

7. *Special service agreements of national experts*: paragraph 4 of the special service agreements provides for insurance coverage for the expert in the following terms:

> The national expert shall have insurance coverage under the [Name] Medical Insurance Scheme for medical expenses for himself or herself only, excluding dependents, at no cost to himself or herself for the duration of the present Service Agreement up to a maximum of US$ 10,000, or the equivalent thereof, per calendar year.
>
> Equally, he or she shall be covered for the duration of the present Service Agreement in the event of death up to a maximum of US$ 25,000 or the equivalent thereof, and for permanent disability up to a maximum of US$ 40,000, or the equivalent thereof. Pension

[1] Similarly, the special service agreements of experts on mission stipulate, in paragraph 11, that "UNIDO undertakes no liability for taxes, duty or other contribution payable by the subscriber under national law on payments made under this agreement".

coverage is the responsibility of the national expert and is not provided for under this agreement.[2]

8. *Agreement establishing the Centre*: Article 6(b) of the agreement establishing the Centre provides that the staff of the Centre includes:

(b) National experts and support officers, with whom UNIDO will conclude individual service agreements defining the conditions of their employment and expressly excluding these persons from participation in the United Nations Joint Staff Pension Fund . . . *The Government of the [State] shall provide social services for the national experts and support officers, including pension arrangements, health insurance and insurance against service-incurred injury in accordance with relevant national legislation and the project budget under the Trust Fund Agreement with the Government.* (Emphasis added)

9. The agreement establishing the Centre is a treaty under international law. In accordance with the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986,[*] a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (article 31, paragraph 1). In addition to the context, there should be taken into account, *inter alia*, any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation (article 31, paragraph 3(b)). Although the Vienna Convention of 1986 is not applicable to the agreement *per se*,[3] article 31 reflects customary international law and should be followed as such.

10. Applying these rules of interpretation to article 6(b) of the agreement, and taking into account the practice of the parties with respect to the payment of the uniform social tax, it may be concluded that:

(1) the special service agreements of national experts and experts on mission should expressly exclude them from participation in the United Nations Joint Staff Pension Fund (UNJSPF);

(2) the Government of the [State] should provide social security services for such experts, including pension arrangements, health insurance and insurance for service-incurred injury, in accordance with relevant national legislation and the project budget under the trust fund agreement between UNIDO and the Government; [4]

(3) the phrase "in accordance with relevant national legislation" in article 6(b) means that matters related to the provision of national social security services, such as eligibility for and scope of benefits, should be determined with reference to relevant national legislation on the subject; and

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[2] Cf. The special service agreements of experts on mission, which provide for Appendix D coverage in paragraph 7.

[*] For the text of the Convention, see A/CONF.129/15.

[3] UNIDO acceded to the Convention in 2002.

[4] The project budget is Annex 1 to the Project Document appended to the Trust Fund Agreement of 16 December 2008.

(4) the phrase "in accordance with . . . the project budget" in article 6(b) means that the costs associated with the experts' participation in the national social security arrangements should be reflected in the project budget and transferred to UNIDO.

11. It follows from the provisions of article 6(b) that UNIDO and the Government should jointly ensure that the project budget is adequate to cover the social security contributions (i.e. the uniform social tax) in respect of national experts employed at the Centre. To the extent that funds are transferred to UNIDO for the purpose of meeting the uniform social tax, it is incumbent on UNIDO to effect the necessary payments. However, there is no obligation on UNIDO to make payments for which no funds are available in the project budget.

12. *Reconciling the Special Service Agreements with the agreement establishing the Centre*: it is obvious from the foregoing that the special service agreements are not consistent with the provisions of the agreement establishing the Centre insofar as social security arrangements are concerned. The question that arises is which agreement prevails.

13. UNIDO's obligations under the agreement establishing the Centre are international in nature. They are obligations owed to the Government of the [State] regardless of the terms of the special service agreements which UNIDO has concluded with individual experts. From the perspective of international law, UNIDO cannot cite the special service agreements as a basis for refusing to pay the uniform social tax, provided the funds required for such payments have been transferred to the Organization.

14. In addition, it is UNIDO's responsibility to ensure that the special service agreements are consistent with the agreement establishing the Centre. The Human Resource Management Branch should consequently review the experts' special service agreements, as and when they come up for renewal, with a view to making appropriate adjustments to take account of the fact that the experts participate, or are supposed to participate, in national social security arrangements. For example, a clause could be added saying that the social security arrangements will be in accordance with the agreement establishing the Centre and, if considered necessary, the remuneration adjusted accordingly. In order to avoid potential disputes, UNIDO should respect the terms of the current special service agreements until such time as they are amended.

15. One question that remains to be answered is whether the special service agreements may provide for *supplemental* social security coverage by UNIDO, such as additional [Name] insurance. Article 6(b) does not address the issue of supplemental coverage. It is possible to interpret the article 6(b) as either permitting or excluding such coverage: permitting it in the sense that supplemental coverage is not prohibited, or excluding it in the sense that social security services are to be provided by the Government rather than UNIDO. As noted earlier, any subsequent practice in the application of the treaty which establishes the agreement of the parties with regard to its interpretation should be taken into account when interpreting an international agreement (article 31, paragraph 3(b) of the Vienna Convention of 1986). Provided the Government of the [State] is aware of and has not objected to the practice of providing supplemental coverage, this practice could be construed as a subsequent practice in the application of the agreement which establishes that the parties agree that UNIDO may provide supplemental social security coverage.

Question 2: Is the Centre obliged to make payment of income tax instead of the national expert?

16. Article 2 of the agreement establishing the Centre provides for the application of the Convention on Privileges and Immunities of the Specialized Agencies to UNIDO officials and to experts performing missions on behalf of the Centre and in the interests of UNIDO. Under the Convention, the only category of employees who are entitled to freedom of taxation in respect of the salaries and emoluments paid to them by the Organization are officials, i.e. members of the regular or project staff. National experts and experts on mission are not exempt from national income tax on their organizational earnings. In this respect, the provisions of the experts' special service agreements[5] are correct and consistent with the agreement establishing the Centre.

17. Your question is thus taken to be whether, notwithstanding the provisions of the special service agreements, the [Centre] is legally obliged to deduct national income tax from the salaries of the experts and to transfer the deducted amounts to the national tax authorities, or whether arrangements for the payment of the tax can be left to the experts themselves.

18. Neither the special service agreements nor the agreement establishing the Centre foresee any role for UNIDO in deducting or remitting national income tax. However, as noted above, the Director of the [Centre]'s email of 7 February mentions that, under [State] legislation, "the employer is obliged monthly [to] effect payment of income tax (13 per cent), which is previously deducted from the staff salary". From the information provided by the Director, it seems that the Centre has, with respect to taxation, accepted the responsibilities of an employer under [State] law. Such a practice does not necessarily run counter to the clauses governing taxation in the special service agreements. These clauses address the question of *responsibility* or *liability* for taxation (i.e. who pays) but not the matter of deduction or remittal to the tax authorities.

19. Unless the discontinuation of the present practice would also be in full conformity with an employer's responsibilities under [State] law, the Centre should carry on deducting and transferring the tax amounts in question. Furthermore, the practice should not be changed without advance consultation with the relevant [State] authorities.

(*b*) Interoffice memorandum to the Director of [Branch Name] regarding outside activity at [non-governmental organization]

Participation of UNIDO staff members in outside activities—Staff should avoid any action which may cause embarrassment, question the appropriateness of direct involvement and jeopardize the privileges and immunities of the Organization—Participation is incompatible with staff member's status as an international civil servant

1. I refer to your emails of 8 and 9 November and 16 and 18 December 2010 concerning the above-mentioned subject. In your email of 8 November 2010, you informed me that you "have been designated as Treasurer of [non-governmental organization] for the past two years earlier [Name 1] and [Name 2] were acting as Treasurers of [non-gov-

[5] The clauses on taxation are quoted in paragraph 4 above and the accompanying footnote.

ernmental organization]). In that capacity, [you] have been signing cheques for [non-governmental organization] as second signatory (as was done by earlier directors) for release of funds. However [you are] still not aware of clarity on [your] role as Treasurer of [non-governmental organization]. Is it in line with [your] responsibility and UNIDO's support being extended to [non-governmental organization] as we are hosting [non-governmental organization] Secretariat in our premises?" I also refer to an email of the Director of Financial Services dated 8 November 2010 expressing his reservations about the nature of your responsibility at [non-governmental organization]. With this email, I wish to confirm the views that I precisely conveyed to you.

2. The guidelines and procedures for the approval of requests by staff members to engage in outside activities are set out in Administrative Circular UNIDO/DA/PS/AC.69 of 17 December 1990. In accordance with paragraph 11 of the said circular, "All requests for permission to engage in an outside activity should be submitted in advance in writing by the staff member through his or her supervisor to the Personnel Administration Section, Personnel Services Division. *The Personnel Administration Section will decide on such requests in accordance with the guidelines set out in the present circular and will give a written notice of the decision to the staff member* within two weeks, with a copy to the administrative assistant of the department concerned."

3. On the assumption that [non-governmental organization] does not engage in commerce, there are a number of potential concerns which should be addressed in connection with possible participation of the Director of [Branch Name] in the activities of that body. First, the positions taken in the future by [non-governmental organization] on issues dealing with energy and environment may differ from those of UNIDO's Member States, thus creating an embarrassing situation for the Director-General and for the Organization as a whole. The related concern is that the appropriateness of his direct involvement in [non-governmental organization] might be questioned by some Member States.

4. As indicated on its website, [non-governmental organization] will engage in fundraising. I advise against UNIDO staff being involved in third-party fundraising in view of the risk of jeopardizing the Organization's privileges and immunities. The underlying concern is that, should problems arise during the course of fundraising activities (for example, the improper solicitation of funds, the management of funds, third-party claims or difficulties with the taxation authorities), the staff member involved would be exposed to the risk of litigation, which might indirectly implicate the privileges and immunities of the Organization.

5. In light of the above and based on the information provided to the Legal Office, I wish to advise you that the intended outside activity is not compatible with your status as the Director of [Branch Name] and UNIDO will therefore be taking risks in authorizing this activity. The participation of a UNIDO staff member in financial activities of such an outside body would clearly be inconsistent with his or her status as an international civil servant. This advice is without prejudice to the decision of the Human Resource Management Branch on this matter under the Administrative Circular UNIDO/DA/PS/AC.69 of 17 December 1990.

(*c*) Interoffice memorandum to the Unit Chief and Deputy to the Director, Staff Services and Employee Relations Unit regarding legal opinion on whether there is an obligation to refund [State 1] income tax to a staff member employed as a national of [State 2]

Interpretation of staff rule 203.05 and staff regulation 6.8(c)—Obligation to refund nationl income tax regardless of recognized nationality of staff member—Refund of national income tax does not entail express or implied recognition of two nationalities under staff rules

1. This is with reference to Mr. [Name 1]'s emails of 30 May 2011, requesting a legal opinion from this Office on whether there is an obligation, legal or otherwise, to refund [State 1] income tax to a staff member employed as a national of [State 2]. The requested opinion is set out herein.

Background

2. The background to your request involves Mr. [Name 2] ("the staff member"), who was recruited at the level L-5 under the 200-series of the staff rules in June 2009. Information provided by the Human Resource Management Branch (HRM) indicates that the staff member was born in the [State 1] and holds dual [State 1]-[State 2] nationality. The staff member declared both nationalities on his UNIDO personal history form prior to recruitment and was recruited as a national of [State 2], which remains his recognized nationality for the purposes of the staff regulations and rules. According to HRM, there is no record that the staff member raised any questions at the time of his recruitment regarding the reimbursement of national taxes in the [State 1] or that UNIDO made any commitment to him to that effect.

3. In March 2011, the staff member asked the Financial Services Branch for a statement of taxable earnings in view of his obligation to pay income tax in the [State 1]. At the same time, he indicated that [he] would claim a refund once he had paid his taxes. In reply, the staff member was informed that his name was not on the list of [State 1] nationals drawn up by HRM and that he should clarify with HRM whether he was entitled to a refund. The staff member thereupon contacted HRM.[6]

4. HRM's position on the matter, as set out in one of Mr. [Name 1]'s emails is that:

> *. . . reimbursing the staff member for national income tax by the state of his/her second or third nationality/residence* (i.e. not official nationality as recognized by the Organization) *will amount to recognizing two nationalities in the application of the staff regulations and staff rules. As such, it will be contrary to the provisions of [staff rule] 203.05* and will create an undesirable precedent, probably not only for this particular benefit but also for the administration of other entitlements/benefits based on the staff member's status under national laws. [Emphasis added]

[6] HRM's reply to the staff member, evidently dated 10 March 2011, was not sent to LEG along with the other correspondence concerning the case.

Legal Questions

5. This opinion concerns two related questions, which for the sake of convenience may be formulated as follows:

i. Whether a staff member employed as a national of [State 2] has the right to a refund of [State 1] income tax in respect of his official salary and emoluments?

and

ii. Whether such a refund would result in the recognition of two nationalities for the staff member, in breach of the provisions of staff rule 203.05?

Obligation to refund national income tax regardless of nationality

6. The legal basis for refunding national income tax in respect of official salaries and emoluments is staff regulation 6.8(c), which reads as follows:

> (c) *Where a staff member*, notwithstanding Section 18(b) of the Convention on the Privileges and Immunities of the United Nations or Section 19(b) of the Convention on the Privileges and Immunities of the Specialized Agencies, as applicable, *is subject to national income taxation in respect of the salaries or emoluments paid to him or her by the Organization*, the Director-General is authorized to refund to the staff member an amount representing the tax paid for the year on his or her organization salary and emoluments. (Emphasis added)

7. Staff rule 203.05, which deals with nationality, closely corresponds to staff rule 103.08. Staff rule 203.05 provides that:

> (a) In the application of these rules, the Organization shall not recognize more than one nationality for project personnel.
>
> (b) When project personnel have been legally accorded nationality status by more than one State, the nationality for the purposes of the Staff Regulations and of these rules shall be the nationality of the State with which the individual is, in the opinion of the Director-General, most closely associated.

8. This Office has produced a number of opinions over the years on the subject of staff regulation 6.8(c),[7] though none dealing expressly with the relevance, if any, of staff rules 103.08 or 203.05. These opinions have made it clear that staff regulation 6.8(c) establishes an obligation on the part of UNIDO to refund to staff members the amount of

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[7] See in particular:

1. Mr. [Name 3]'s Note to the Director-General, dated 15 April 1998, entitled "Reimbursement by UNIDO of income tax to staff members of [State 1] nationality";

2. Mr. [Name 4]'s legal opinion, dated 31 August 1998, on *Whether there is a requirement to continue reimbursing [State 1] income taxes imposed on certain staff members of the United Nations Industrial Development Organization after the [State 1] withdrew from the Organization and denounced the Tax Reimbursement Agreement*;

3. LEG's IOM to Mr. [Name 5] and Ms. [Name 6], dated 11 May 2007, entitled "Reimbursement of [State 1] Income Taxes";

4.LEG's IOM to Mr. [Name 7], dated 9 August 2007, entitled "Mr. [Name 8]—Refund of [State 1] income taxes"; and

5.LEG's IOM to you dated 3 February 2009, entitled "Draft Director-General's bulletin on policy on national income tax reimbursement".

any national income tax in respect of their official salaries or emoluments. Since the staff regulations are part of the conditions of service of the staff, no other commitment to this effect is needed.

9. In accordance with the provisions of staff regulation 6.8(c), a refund is authorized "[w]here a staff member . . . is subject to national income taxation in respect of the salaries or emoluments paid to him or her by the Organization". This straightforward formulation means that a staff member has the right to a refund *regardless of his or her recognized nationality*. To ensure equality between staff, nationality should not be considered for the purposes of implementing staff regulation 6.8(c), provided of course that the staff member is acting in good faith. As I pointed out in my inter-office memorandum to you, dated 3 February 2009:

> 8. . . . *The regulation [i.e. staff regulation 6.8(c)] does not make reimbursement conditional on the staff member's being a national or resident of the taxing State*. Nor does it require there to be a valid tax reimbursement agreement between UNIDO and the taxing State, or rule out reimbursement where the staff member has acquired the nationality or residence of the taxing state for personal reasons. (Emphasis added)

10. HRM's position (see paragraph 4 above) implies that a refund of the staff member's [State 1] income tax could be denied on the basis that his recognized nationality ([State 2]) is not that of the taxing state ([State 1]). Besides conflicting with the plain meaning of staff regulation 6.8(c), HRM's position appears to sanction discrimination on the grounds of nationality, which would be *prima facie* unlawful. It would also be at odds with a fundamental principle enunciated by the International Labour Organization Administrative Tribunal (ILOAT), namely that "the remuneration of international civil servants must be exempt from national taxes" (Judgment No. 2255, consideration 25).

11. HRM does not indicate why a refund of the staff member's [State 1] income tax would amount to the recognition of two nationalities under staff rule 203.05. My view is that a refund of national income tax entails no express or implied recognition of nationality under staff rule 203.05, even if the individual concerned happens to be a national of the taxing state. *A fortiori*, a refund cannot lead to the recognition of two nationalities, assuming that staff rule 203.05 actually allowed such a result, which seems doubtful. In the present case, a refund would have no bearing on the staff member's recognized nationality, which would remain [nationality of State 1] unless and until it is changed pursuant to staff rule 203.05(b). The hypothesis that a refund of [State 1] income tax would amount to the recognition of two nationalities is, accordingly, incorrect.

Conclusions

12. My conclusions with respect to the questions under consideration may be summarized as follows:

i. *Whether a staff member employed as a national of [State 2] has the right to a refund of [State 1] income tax in respect of his official salary and emoluments?*

In accordance with staff regulation 6.8(c), a staff member employed as a national of [State 2] has the right to a refund of [State 1] income tax in respect of his official salary and emoluments. No other commitment to this effect is required on the part of UNIDO.

ii. *Whether such a refund would result in the recognition of two nationalities for the staff member, in breach of the provisions of staff rule 203.05?*

Such a refund would not result in the recognition of two nationalities for the staff member or in any change in his nationality status; nor would it contravene staff rule 203.05, which in any event does not appear to allow for the recognition of more than nationality.

(*d*) Interoffice memorandum to the Unit Chief and Deputy to the Director, Staff Services and Employee Relations Unit regarding second legal opinion on the obligation to refund [State 1] income tax to a staff member employed as a national of [State 2]

Interpretation of staff regulation 6.8(c) and staff rule 203.05—Plain meaning of the text of the regulation—Normative hierarchy between staff regulations and rules—Principles of equal treatment and non-discrimination—interpretation of 'special' cases

1. This is with reference to your email dated 16 June 2011, regarding this Office's legal opinion of 10 June 2011 on the obligation to refund [State] income tax to a staff member who holds dual [State 1]-[State 2] nationality. You write that LEG could have misunderstood and/or misinterpreted the issue at hand and therefore request further clarification in light of the additional comments you have provided.

2. At the beginning of your email you stress that the questions and issue at hand have "nothing to do with nationality per se or with any specific nationality in particular". It is clear from what follows, however, that nationality is at the root of the matter. In HRM's view, the question is whether a staff member has the right to a refund of national income tax levied by a state "which has not been recognized as [the State of] his/her *official nationality* for the purposes of UNIDO staff regulations and staff rules". You state that HRM's understanding of the provisions of staff regulation 6.8(c),[8] read in conjunction with the provisions of staff rule 203.05[9] on *nationality,* is that a staff member has a right to a refund of national income tax "but only with regard to national income tax levied by the country of his/her *'official' nationality*". This reading is based on the intention of staff rule 203.05, which is described as being "to limit organizational financial

[8] *Staff regulation 6.8(c)*:

Where a staff member, notwithstanding section 18 (b) of the Convention on the Privileges and Immunities of the United Nations or section 19 (b) of the Convention on the Privileges and Immunities of the Specialized Agencies, as applicable, is subject to national income taxation in respect of the salaries or emoluments paid to him or her by the Organization, the Director-General is authorized to refund to the staff member an amount representing the tax paid for the year on his or her organization salary and emoluments.

[9] *Staff Rule 203.05*:

(a) In the application of these rules, the Organization shall not recognize more than one nationality for project personnel.

(b) When project personnel have been legally accorded nationality status by more than one State, the nationality for the purposes of the Staff Regulations and of these rules shall be the nationality of the State with which the individual is, in the opinion of the Director-General, most closely associated.

liabilities only to those related to the staff member's official status in the Organization". In support of your interpretation of staff regulation 6.8(c), you argue that "all kinds of 'special' cases, like for example, a national income tax levied by the country of the staff member's duty station, etc., are not at issue" and, further, that the staff member is not such a special case.

3. In my view, HRM's interpretation of staff regulation 6.8(c) places undue reliance on the provisions of staff rule 203.05 and the objective of securing financial savings. In order to arrive at the correct construction of staff regulation 6.8(c), it is necessary to approach the matter quite differently. In particular, regard must be had to the text of the regulation, the hierarchy of the norms in question, and relevant underlying principles such as the principles of equal treatment and non-discrimination. Financial savings, though a worthy aim, trump none of these considerations.

4. As I see it, there are four main objections to HRM's interpretation of staff regulation 6.8(c). I will deal with each one in turn.

5. The first difficulty is that HRM's interpretation conflicts with the plain meaning of staff regulation 6.8(c). As I have pointed out previously, staff regulation 6.8(c) applies where a staff member "is subject to national income taxation in respect of the salaries or emoluments paid to him or her by the Organization". The regulation does not stipulate that the staff member must be recognized as a national of the taxing State in order to be eligible for a refund. Indeed, the regulation makes no reference at all to the nationality of the staff member. And since the possession of a particular nationality is not a precondition for entitlement to a refund, there is no reason why the regulation should be interpreted in conjunction with the staff rule on nationality, as HRM is proposing to do.

6. The second difficulty with respect to HRM's interpretation is that it reverses the normative hierarchy between the staff regulations and the staff rules. Pursuant to the preamble to the staff regulations, the staff rules are subordinate to and must be consistent with the staff regulations. Accordingly, if a staff rule is thought to be inconsistent with a staff regulation, the latter must prevail. However, instead of giving staff regulation 6.8(c) precedence over staff rule 203.05, HRM's analysis would result in the regulation's being made subject to the rule and indeed modified by it.

7. The third difficulty with respect to HRM's interpretation is that it conflicts with several general principles of law, such as the principle of equal pay for equal work and the prohibition of unequal treatment and unfair discrimination. These general principles, which are implied terms of every staff member's contract, confer substantive rights and obligations but can also function as interpretative aids. In interpreting a regulation or rule, general principles operate to preclude a reading which is inconsistent with the principles underlying the provision in question. In the present case, general principles prevent staff regulation 6.8(c) from being interpreted in such a way that a staff member, who also pays staff assessment, will receive less favourable treatment than others on account of his recognized nationality. As the ILOAT has put it, it is a fundamental principle that "the remuneration of international civil servants must be exempt from national taxes" (Judgment No. 2255, consideration 25). That principle, which was recognized by the former Unit-

ed Nations Administrative Tribunal as well,[10] applies to all staff members equally, regardless of their recognized nationality. Staff regulation 6.8(c) must be interpreted accordingly.

8. The fourth difficulty with respect to HRM's interpretation concerns its inherently contradictory approach towards 'special' cases, including the notional situation in which taxation is imposed by the State of the staff member's duty station. HRM recognizes, correctly, that the staff member would be eligible for a refund in cases of this kind. However, in such cases, taxation would be a consequence of domicile or residence and there may be no link of nationality between the staff member and the taxing state. If staff regulation 6.8(c) really required the staff member to be recognized as a national of the taxing State, as HRM contends, it would obviously prevent a refund in 'special' cases as well.

9. Considering these four objections, I have concluded that HRM's interpretation of staff regulation 6.8(c) cannot be defended from a legal point of view. In my opinion, it would be a manifest error of law (and hence an abuse of discretion) for the Director-General to deny a refund under the regulation on the grounds that the staff member is not recognized as a national of the taxing State.

10. Your email makes a number of additional arguments relating to the facts of the case, which need to be addressed. These are that the staff member's service in UNIDO does not require a second nationality, that he never asked our authorization to keep it, that UNIDO did not commit to reimburse him for his [State 1] national income tax, and that there are no administrative decisions or actions which could be interpreted as recognizing the staff member's [State 1] nationality in the application of the staff regulations and rules. These arguments, which were touched upon in your original request, do not change my opinion on the matter. The staff member's entitlement to a refund arises under staff regulation 6.8(c), which is a term and condition of his employment. There is consequently no basis for suggesting that UNIDO had to make any additional commitment in this regard. Furthermore, *the staff member was recruited in full knowledge that he was a [State 1] national subject to [State 1] taxes*. In such circumstances, it seems inappropriate to suggest that he needed authorization to keep his nationality of birth, even assuming that our rules provided for such a procedure. At any rate, it is doubtful that the Director-General could refuse such permission or exclude the right to a refund by unilateral condition, if that is what your argument intended to suggest.

11. You indicate that this Office's opinion appears to sanction a "selective" application of staff rule 203.05 inasmuch as the rule would be applied in connection with some benefits and entitlements and some staff regulations but ignored in connection with staff regulation 6.8(c). I beg to differ. Since staff rule 203.05 deals with the recognition of nationality, it can only be applied where the staff member's nationality is relevant to the benefit or entitlement in question. As I have indicated already, the right to a refund does not depend

[10] See the attached opinion by the Office of Legal Affairs of the United Nations, dated 24 January 1992, reproduced in the *United Nations Juridical Yearbook 1992*, United Nations Publications, Sales No. E.97.V.8, p. 487–488. The facts giving rise to that opinion were apparently similar to those in the current case, except that the staff member was a dual national of the United Kingdom and the United States. In its opinion, the Office of Legal Affairs concluded that the refusal to refund the staff member United States income tax "cannot be countenanced either in law or equity and would involve discrimination against the staff member" (final paragraph).

on a staff member's nationality. There is therefore no question of applying the staff rule in this context.

12. A further argument you raise is that our interpretation appears to imply that a staff member has a right to a refund of national income tax levied by more than one state: the state of his official nationality, the state of his second nationality and the state of his permanent residence. While the situation you describe appears to be rather remote and hypothetical, staff regulation 6.8(c) would not prevent a refund where there is more than one taxing state, provided the staff member is acting in good faith. Any other interpretation of the regulation would probably result in a breach of the principles which underpin it.

13. You also take issue with the conclusion that a refund of national income tax under staff regulation 6.8(c) would not amount to recognition of the staff member's second (unofficial) nationality in the application of the staff regulations and rules. You do not, however, explain how a *refund of national income tax* can be equated with *recognition of nationality*, which is a different administrative act, governed by a different set of provisions. You argue instead that this Office has contradicted its analysis in the case of [Name]. Again, I must disagree. The effect of a refund on the staff member's official status is the same in both cases: there is none. In [Name]'s case, there was a *preceding* change in residency status, which the Organization had implicitly accepted by granting him home leave in the [State 1]. The actual refund did not affect his status at all. In the present case, the staff member's nationality status will likewise remain unchanged should he receive a refund. He will still be an [State 2] national, and solely an [State 2] national, for all official purposes.

14. For the above reasons, I reaffirm the conclusions set out in my opinion of 10 June 2011.

(*e*) Interoffice memorandum to the Director of [Branch Name] regarding UNIDO as Member or Observer at [association] of [international entity]

UNIDO AND STAFF MEMBER'S INVOLVEMENT IN NON-GOVERNMENTAL ORGANIZATION OR NON-UNITED NATIONS ENTITY—STAFF SHOULD AVOID OUTSIDE ACTIVITY, WHETHER IN AN OFFICIAL CAPACITY OR PRIVATE CAPACITY, WHICH MAY CONFLICT LOYALTIES, IMPAIR INDEPENDENCE AND IMPARTIALITY, ENGENDER POTENTIAL LEGAL AND FINANCIAL LIABILITIES AND ADVERSELY REFLECT ON THE REPUTATION OF UNIDO

1. I refer to your email of 20 May 2011, asking for advice in connection with UNIDO's involvement in an association called the [Name], the objectives of which include the furtherance of solar energy, smart grids and electric vehicles in [continent].

2. The draft Charter of the [association] states that "after one year of the inception of its operation, the [association] will be incorporatized [sic] as [a] Non-Profit Organization under [State]'s act to be located in [city], [State]" (Article 3). It appears, therefore, that the [association] will have the status of a national non-governmental organization (NGO) under the law of [State].

3. You identify three possible options for UNIDO's involvement in the [association]: (1) that you become a member of the Board of the [association] in your capacity as Director of [Branch Name]; (2) that UNIDO becomes a regular member of the [association]; and (3) that UNIDO becomes an observer member of the [association]. I wish to provide you with the following advice concerning these options.

4. With regard to option (1), the Office of Legal Affairs usually recommends against authorizing a staff member to assume any kind of managerial function in an NGO or similar non-United Nations entity, whether in an official capacity as a staff member or in a private capacity as an outside activity requiring advance authorization by the Director-General. This is because such a position is, amongst other things, likely to result in:

– *Conflicting loyalties* (in terms of staff regulation 1.1, a staff member is required to discharge his or her functions with only the interests of UNIDO in view; however, membership of the board of an NGO would probably interfere with the staff member's work and result in the consideration of non-UNIDO interests, thereby placing the staff member in an impossibly conflicted situation);

– *The appearance of preference or partiality* (membership of a board would impair the independence and impartiality required of a staff member under staff regulation 1.3, while questions may also arise as to why one NGO is supported by UNIDO but not another);

– *Potential legal and financial liabilities* (although the risks are difficult to gauge, membership of a board could unwittingly open the staff member and UNIDO to claims and litigation in connection with the activities and operations of the NGO); and

– *Reputational risks for UNIDO* (the decisions and activities of the NGO could, by association, bring UNIDO or the United Nations into disrepute).

5. In light of the above, we would advise you not to accept a position as Director on the Board of the [association], either in your capacity as Director of [Branch Name] or in your private capacity.

6. Concerning options (2) and (3), LEG also usually advises against UNIDO's membership of NGOs. Besides the fact that the name and resources of UNIDO should not be diverted to support another entity, there is an inherent risk that the interests of the NGO would conflict with those of UNIDO. Furthermore, neither the Constitution of UNIDO nor the relevant Guidelines adopted by the General Conference* foresee such membership. I am therefore of the opinion that UNIDO could only become a regular or observer member of the [association] with the express approval of the General Conference. Given the legal and other implications involved, any proposal for membership would need to be accompanied by compelling reasons.

(*f*) Internal email message to the Director, Policymaking Organs Secretariat regarding procedures to be followed to become a member of UNIDO

MEMBERSHIP PROCEDURES UNDER CONSTITUTION OF UNIDO—MEMBER STATES CAN RAISE QUESTIONS REGARDING THE STATUS OF STATES SEEKING MEMBERSHIP—CONCEPT OF STATEHOOD UNDER INTERNATIONAL LAW NOT A REQUISITE CRITERION FOR MEMBERSHIP

* See GC.1/Dec. 41 of 12 December 1985, entitled "Guidelines for the relationship of UNIDO with intergovernmental, governmental, non-governmental and other organizations".

1. I refer to your e-mail of 14 October 2011 requesting me to confirm your understanding of article 3 (a) of the Constitution of UNIDO concerning the procedures to become a member of UNIDO. [. . .]

2. Article 3 of the Constitution of UNIDO reads:

> Membership in the Organization is open to all States which associate themselves with the objectives and principles of the Organization:
>
> (a) States Members of the United Nations or of a specialized agency or of the International Atomic Energy Agency may become Members of the Organization by becoming parties to this Constitution in accordance with article 24 and paragraph 2 of article 25;
>
> (b) States other than those referred to in subparagraph (a) may become Members of the Organization by becoming parties to this Constitution in accordance with paragraph 3 of article 24 and subparagraph 2 (c) of article 25, after their membership has been approved by the Conference, by a two-thirds majority of the Members present and voting, upon the recommendation of the Board.

3. The Member States of UNIDO are free to raise any question about the status of [State 1] as a State, and the Secretariat cannot prevent them from raising their questions. However, as can be seen from the above, article 3 does not establish the criteria of statehood under international law. If a State is already a member of the United Nations or a specialized agency, it could become a member of UNIDO by depositing an instrument with the depositary in accordance with procedures set out in article 24 and paragraph 2 of article 25 of the Constitution of UNIDO. However, if a State is not a member of the United Nations or a specialized agency, it should comply with the procedures set out in articles 24 and 25 after their membership has been approved by the General Conference of UNIDO. In terms of UNIDO's practice, I recall that [State 2]—represented by the United Nations Council for [State 2]—became a member of UNIDO in accordance with article 3(a) of the Constitution when it did not have all the attributes of a sovereign State. By the end of the General Conference of [United Nations specialized agency] in [date] we will know if [State 1]'s possible membership application of UNIDO would fall under article 3 (a) or 3 (b).

4. I wish to inform you that the first session of the General Conference of UNIDO adopted decision [number] on observer status of [State 1]. I have attached the text of this decision for your information.

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 5 April 2011, the President of the Court ordered the case of *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium* v. *Switzerland)* to be removed from the list of cases after the Agent of Belgium had requested the Court to make such an order recording Belgium's discontinuance of the proceedings. A time-limit was provided for in accordance with Article 89, paragraph 2, of the Court's Rules of Procedure, for Switzerland to oppose the discontinuance of the proceedings, but no such opposition was made.

1. Judgments

(i) *Application of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia* v. *Greece),* Judgment, 5 December 2011.

(ii) *Territorial and Maritime Dispute (Nicaragua* v. *Colombia),* Judgment, Application by Costa Rica for Permission to Intervene, 4 May 2011.

(iii) *Territorial and Maritime Dispute (Nicaragua* v. *Colombia),* Judgment, Application by Honduras for Permission to Intervene, 4 May 2011.

(iv) *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation),* Judgment, 1 April 2011.

2. Advisory Opinions

No advisory opinions were delivered by the Court in 2011.

[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 2010 to 31 July 2011, Report of the International Court of Justice, *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 4* (A/66/4). At the time of publication, the report covering the period 1 August 2011 to 31 July 2012 was forthcoming.

3. Pending cases and proceedings as at 31 December 2011

(i) *Request for interpretation of the Judgment of 15 June 1962 in the case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand) (Cambodia* v. *Thailand)* (2011-).

(ii) *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* (2010-).

(iii) *Frontier Dispute (Burkina Faso/Niger)* (2010-).

(iv) *Whaling in the Antarctic (Australia* v. *Japan)* (2010-).

(v) *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-).

(vi) *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal) (2009-).*

(vii) *Aerial Herbicide Spraying (Ecuador* v. *Colombia)* (2008-).

(viii) *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece Intervening*) (2008-).

(ix) *Maritime Dispute (Peru* v. *Chile)* (2008-).

(x) *Territorial and Maritime dispute (Nicaragua* v. *Colombia)* (2001-).

(xi) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)* (1999-).

(xii) *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* (1999-).

(xiii) *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* (1998-).

(xiv) *Gabčíkovo-Nagymaros Project (Hungary* v. *Slovakia)* (1993-).

B. International Tribunal for the Law of the Sea[2]

The International Tribunal for the Law of the Sea is an independent permanent tribunal established by the United Nations Convention on the Law of the Sea, 1982.[3] The Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea,[4] signed by the Secretary-General of the United Nations and the President of the Tribunal on 18 December 1997, establishes a mechanism for cooperation between the two institutions.

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[2] For more information about the Tribunal's activities, including relating to orders rendered in 2011, see the Annual report of the International Tribunal for the Law of the Sea for 2011 (SPLOS/241) and the Tribunal's website at www.itlos.org.

[3] United Nations, *Treaty Series*, vol. 1833, p. 3.

[4] *Ibid*., vol. 2000, p. 468.

1. Judgments

No judgments were delivered by the Tribunal in 2011. On 1 February 2011, the Tribunal delivered an advisory opinion in *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).*

2. Pending cases and proceedings as at 31 December 2011

(i) *Case No. 19—The M/V "Virginia G" Case (Panama/Guinea-Bissau)* (2011-).

(ii) *Case No. 18—The M/V "Louisa" Case (Saint Vincent and the Grenadines* v. *Spain)* (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 Negotiated Relationship Agreement between the International Criminal Court and the United Nations[7] outlines the relationship between the two institutions.

As of 2011, the Court was investigating seven 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 situations in Darfur, Sudan, and in Libya, both non-States Parties, were referred to the Court by the United Nations Security Council under article 13 (b) of the Rome Statute. After an analysis of available information, the Prosecutor had opened and is conducting investigations in all of the above-mentioned situations.

On 3 October 2011, Pre-Trial Chamber III granted the Prosecutor's request for authorization to open investigations *proprio motu* into the situation in Côte d'Ivoire with respect to alleged crimes within the jurisdiction of the Court, committed since 28 November 2010, as well as with regard to crimes that may be committed in the future in the context of this situation.

Furthermore, the Office of the Prosecutor is conducting preliminary examinations in various situations, including in Afghanistan, Colombia, Georgia, Guinea, Republic of Korea, Nigeria, Honduras and Palestine.

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[5] For more information about the Court's activities, see Report of the International Criminal Court, for the period 1 August 2010 to 31 July 2011 (A/66/309). At the time of publication, the report covering the period 1 August 2011 to 31 July 2012 was forthcoming. See also the Court's website at http://www.icc-cpi.int.

[6] United Nations, *Treaty Series*, vol. 2187, p. 3.

[7] See ICC-ASP/3/Res 1. Entered into force on 22 July 2004.

1. Situations under investigation in 2011

(*a*) The 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 2011.

The suspect in *The Prosecutor* v. *Callixte Mbarushimana* (ICC-01/04–01/10) was transferred to The Hague on 25 January 2011 and a hearing on the confirmation of the charges was held on 16 to 21 September 2011. On 16 December 2011, Pre-Trial Chamber I decided by Majority to decline to confirm the charges against Mr. Mbarushimana and to release him from the custody of the Court, on the completion of the necessary arrangements.

The suspect in the case *The Prosecutor* v. *Bosco Ntaganda* (ICC-01/04–02/06) remained at large throughout 2011.

(*b*) The situation in the Central African Republic

The trial in the case *The Prosecutor* v. *Jean-Pierre Bemba Gombo* (ICC-01/05–01/08) was ongoing in 2011.

(*c*) The 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 2011.

(*d*) The 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 2011.

The suspect in *The Prosecutor* v. *Omar Hassan Ahmad Al Bashir* (ICC-02/05–01/09) also remained at large throughout 2011. On 12 May 2011, Pre-Trial Chamber I issued a decision informing the Security Council and the Assembly of States Parties to the Rome Statute about Omar Al Bashir's visit to Djibouti, to attend the inauguration ceremony of Djibouti's President on 8 May 2011, "in order for them to take any measure they may deem appropriate". The Chamber stressed that Djibouti, as a State Party to the Rome Statute, "has an obligation to cooperate with the Court" in relation to the enforcement of warrants of arrest, and ordered the ICC Registrar to immediately transmit the decision to the Security Council and to the Assembly of States Parties. Previously, pursuant to the Pre-Trial Chamber decisions issuing two warrants of arrest against Omar Al Bashir, the Court's Registrar had issued and transmitted requests for arrest and surrender of Mr. Al Bashir to all States Parties to the Rome Statute, including Djibouti. Furthermore, on 19 October 2011, Pre-Trial Chamber I issued a decision requesting the Republic of Malawi to submit, no later than 11 November 2011, any observations with regard to the alleged failure by the Republic of Malawi to comply with the cooperation requests issued by the Court for the arrest and surrender of the Sudanese President, Omar Hassan Ahmad Al Bashir.

The Chamber was seized of a Court's Registry's report indicating that various media had reported that Omar Al Bashir had visited the Republic of Malawi on 14 October 2011, and highlighting that the Registrar had sent a *note verbale*, which remained unanswered, to the Embassy of the Republic of Malawi in Brussels on 13 October 2011, reminding the Republic of Malawi of its legal obligations as a State Party to the Rome Statute and asking for its cooperation for the arrest and surrender of Mr. Al Bashir "in the event that the latter would enter Malawi's territory". The Chamber also noted article 87(7) of the Rome Statute providing that "[w]here a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute [. . .] the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council".

On 7 March 2011, Pre-Trial Chamber I unanimously decided to confirm the charges of war crimes brought against the two suspects in the case *The Prosecutor* v. *Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (ICC-02/05–03/09). On 16 March 2011, the Presidency of the Court constituted Trial Chamber IV composed of Judges Fatoumata Dembele Diarra, Joyce Aluoch and Silvia Fernandez de Gurmendi and referred this case to the new Trial Chamber.

(*e*) The situation in Kenya

On 8 March 2011, Pre-Trial Chamber II delivered summonses to appear to the six suspects in *The Prosecutor* v. *William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* (ICC-01/09–01/11) and *The Prosecutor* v. *Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* (ICC-01/09–02/11). Confirmation of charges hearings were held in the first case from 1 to 8 September 2011 and in the second case from 21 September to 5 October 2011.

(*f*) The situation in Libya

In resolution 1970 (2011) of 26 February 2011, the Security Council, acting under Chapter VII of the Charter of the United Nations, referred the situation in Libya, since 15 February 2011, to the Prosecutor of the Court. On 3 March 2011, the Prosecutor decided to open an investigation and requested, on 16 May 2011, the issuance of arrest warrants. On 27 June 2011, Pre-Trial Chamber I issued three warrants of arrest for Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdualla Al-Senussi, respectively, for crimes against humanity (murder and persecution) allegedly committed across Libya from 15 February 2011 until at least 28 February 2011, through the State apparatus and Security Forces. Abdullah Al-Senussi remained at large throughout 2011. Saif Al-Islam Gaddafi was arrested in Libya on 19 November 2011. On 6 December 2011, the Pre-Trial Chamber ordered the Libyan authorities to provide it with more information concerning the status of Mr. Gaddafi. The Chamber requested the National Transitional Council of Libya to file their response by 10 January 2012, as well as seeking submissions from the Office of the Prosecutor and the Office of Public Counsel for the Defence.

On 22 November 2011, Pre-Trial Chamber I decided to terminate the case against Muammar Gaddafi. The Prosecution had requested the Judges to withdraw the warrant of arrest issued for Muammar Mohammed Abu Minyar Gaddafi because of the changed

circumstances caused by his death on 20 October 2011. The Chamber recalled that the purpose of criminal proceedings is to determine individual criminal responsibility and that jurisdiction cannot be exercised over a deceased person.

(*g*) The situation in Côte d'Ivoire

On 20 May 2011, the Presidency of the Court assigned the situation in the Republic of Côte d'Ivoire to Pre-Trial Chamber II following a letter of 19 May 2011, by which the Prosecutor informed the President of the Court of his intention to submit a request to the Pre-Trial Chamber for authorization to open investigations into the situation in Côte d'Ivoire since 28 November 2010. Côte d'Ivoire is not party to the Rome Statute but has accepted and reconfirmed acceptance of the jurisdiction of the Court, under article 12(3) of the Rome Statute, on several occasions. After a preliminary examination, the Prosecutor concluded that there was a reasonable basis to believe that crimes within the jurisdiction of the Court have been committed in Côte d'Ivoire since 28 November 2010, and on 22 June 2011 the Presidency of the Court constituted Pre-Trial Chamber III and assigned the situation in the Republic of Côte d'Ivoire to the Chamber. On 23 June 2011, the Prosecutor filed his "Request for authorization of an investigation pursuant to article 15" (investigations *proprio motu*) in which he requested authorization from the Chamber to commence an investigation into the situation in Côte d'Ivoire in relation to post-election violence in the period following 28 November 2010. The main objective of the proposed investigation was to identify those individuals who bear the greatest responsibility for ordering or facilitating crimes against humanity and war crimes. On 3 October 2011, the Chamber authorized the commencement of the investigation.

2. Judgments

No judgments were delivered by the Trial Chambers or Appeals Chamber in 2011.

D. International Criminal Tribunal for the former Yugoslavia[8]

The International Criminal Tribunal for the former Yugoslavia is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 827 of 25 May 1993.[9] The Tribunal has commenced all trials, and with Ratko

[8] The texts of the indictments, decisions and judgements are published in the *Judicial Reports/Recueils judiciaires* of the International Criminal Tribunal for the former Yugoslavia for each given year. The texts are also available in English and French on the Tribunal's website at www.icty.org. For more information about the Tribunal's activities, see, for the period 1 August 2010 to 31 July 2011, 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/66/210–S/2011/473). At the time of publication, the report covering the period 1 August 2011 to 31 July 2012 was forthcoming.

[9] The Statute of the Tribunal is annexed to the report of the Secretary-General pursuant to Security Council resolution 808 of 22 February 1993 (S/25704 and Add.1).

Mladić and Goran Hadžić being arrested on 26 May and 20 July 2011, respectively, there are no remaining fugitives.

1. Judgements delivered by the Appeals Chamber

(i) *Prosecutor* v. *Florence Hartmann,* Case No. IT-02–54-R77.5-A, Judgement on Allegations of Contempt, 19 July 2011.

2. Judgements delivered by the Trial Chambers

(i) *Prosecutor* v. *Kabashi,* Case No. IT-04–84-R77.1, Sentencing Judgement on Allegations of Contempt, 16 September 2011.

(ii) *Prosecutor* v. *Momčilo Perišic,* Case No. IT-04–81-T, Judgement, 6 September 2011.

(iii) *Prosecutor* v. *Gotovina et al.,* Case No. IT-06–90-T, Judgement, 15 April 2011.

(iv) *Prosecutor* v. *Vlastimir Đorđević,* Case No. IT-05–87/1-T, Judgement, 23 February 2011.

E. International Criminal Tribunal for Rwanda[10]

The International Criminal Tribunal for Rwanda is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 955 (1994), adopted on 8 November 1994.[11]

On 28 June 2011, the Referral Chamber designated under rule 11*bis* of the Tribunal's Rules of Procedure and Evidence, referred the case of *The Prosecutor* v. *Jean Uwinkindi* (Case No. ICTR-2001–75-PT) to the authorities of the Republic of Rwanda, and requested the Registrar to appoint the African Commission on Human and People's Rights as monitor for the trial of the accused in Rwanda under rule 11*bis*(D)(iv).

1. Judgements delivered by the Appeals Chamber

(i) *Théoneste Bagosora and Anatole Nsengiyumva* v. *the Prosecutor,* Case No. ICTR-98–41-A, Judgement, 14 December 2011.

[10] The texts of the orders, decisions and judgements are published in the *Recueil des ordonnances, décisions et arrêts/Reports of Orders, Decisions and Judgements* of the International Criminal Tribunal for Rwanda. The texts are also available in English and French in the Tribunal's Judicial Records Database at http://www.ictr.org. For more information about the Tribunal's activities, see the annual report to the General Assembly and the Security Council. For the period 1 July 2010 to 30 June 2011, see Sixteenth Annual 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/66/209–S/2011/472). At the time of publication, the report covering the period 1 July 2011 to 30 June 2012 was forthcoming.

[11] The Statute of the Tribunal is contained in the annex to the resolution.

(ii) *Dominique Ntawukulilyayo* v. *the Prosecutor,* Case No. ICTR-05–82-A, Judgement, 14 December 2011.

(iii) *Ephrem Setako* v. *the Prosecutor,* Case No. ICTR-04–81, Judgement, 28 September 2011.

(iv) *The Prosecutor* v. *Yussuf Munyakazi,* Case No. ICTR-97–36A, Judgement, 28 September 2011.

(v) *Tharcisse Muvunyi* v. *the Prosecutor,* Case No. ICTR-2000–55A-A, Judgement, 1 April 2011.

(vi) *Tharcisse Renzaho* v. *the Prosecutor,* Case No. ICTR-97–31-A, Judgement, 1 April 2011.

2. Judgements delivered by the Trial Chambers

(i) *The Prosecutor* v. *Eduoard Karemera and Matthieu Ngirumpatse,* Case No. ICTR-98–44-T, 21 December 2011.

(ii) *The Prosecutor* v. *Gregoire Ndahimana,* Case No. ICTR-2001–68-T, Judgement, 17 November 2011.

(iii) *The Prosecutor* v. *Casimir Bizimungu et al.,* Case No. ICTR-99–50-T, Judgement, 30 September 2011.

(iv) *The Prosecutor* v. *Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi and Élie Ndayambaje,* Case No. ICTR-98–42-T, Judgement, 24 June 2011.

(v) *The Prosecutor* v. *Augustin Ndindiliyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye, and Innocent Sagahutu,* Case No. ICTR-00–56-T, Judgement, 17 May 2011.

(vi) *The Prosecutor* v. *Jean-Baptiste Gatete,* Case No. ICTR-2000–61-T, Judgement, 31 March 2011.

F. Special Court for Sierra Leone[12]

The Special Court for Sierra Leone is an independent court established by the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone.[13] The Court is mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

[12] The texts of the judgements 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 2010 to May 2011, the Eighth Annual Report of the President of the Special Court. At the time of publication, the Ninth Annual Report, covering the period June 2011 to May 2012, was forthcoming.

[13] For the text of the Agreement and the Statute of the Special Court dated 16 January 2002, see United Nations, *Treaty Series,* vol. 2178, p. 137.

1. Judgements

No judgements were delivered by the Trial Chambers or the Appeals Chamber of the Special Court for Sierra Leone in 2011.

G. Extraordinary Chambers in the Courts of Cambodia[14]

The Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the period of Democratic Kampuchea, signed in Phnom Penh on 6 June 2003,[15] entered into force 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

No judgments were delivered by the Trial Chamber or the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia in 2011.

H. Special Tribunal for Lebanon[16]

The Special Tribunal for Lebanon was established in 2007 pursuant to the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, dated 22 January and 6 February 2007,[17] and Security Council resolution 1757 (2007) of 30 May 2007. On 8 September 2011, the Trial Chamber convened for the first time. On 21 October 2011, the President of the Tribunal, Judge Antonio Cassese, passed away. Judge Sir David Baragwanath was elected President to replace Judge Antonio Cassese who passed away.

The case of *Ayyash et al.* (STL-11–01) relates to the attack on the former Lebanese Prime Minister Rafiq Hariri and others on 14 February 2005. On 17 January 2011, the Prosecutor submitted an indictment to the Pre-Trial Judge and amended it three times (11 March, 6 May, and 10 June 2011). This indictment was confirmed on 28 June 2011 and the indictment and accompanying arrest warrants were transmitted to the Lebanese authorities on 30 June 2011. The four individuals named in the indictment were: Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra. On 8 September 2011, the former President of the Special Tribunal for Lebanon, Judge Antonio Cassese, issued an order convening the Trial Chamber for the first time. As

[14] The texts of the decisions of the Extraordinary Chambers in the Courts of Cambodia are available on its website, http://www.eccc.gov.kh. For more information on the Court's activities, see, the Yearly Financial and Activity Progress Report as at 31 December 2011 (forthcoming at the time of publication).

[15] United Nations, *Treaty Series,* vol. 2329, p. 117.

[16] For more information about the activities of the Special Tribunal, see the Tribunal's website at http://www.stl-tsl.org. See the Second Annual Report covering the period 1 March 2010 to 28 February 2011 (S/2010/159) and the Third Annual Report covering the period 1 March 2011 to 29 February 2012.

[17] United Nations, *Treaty Series*, vol. 2461, p. 257.

the accused in this case remained at large, on 17 October 2011, the Pre-Trial Judge asked the Trial Chamber to determine whether proceedings *in absentia* should be initiated. The Tribunal's rules state that if the accused have not been arrested within 30 calendar days of the public advertisement of an indictment, then the Pre-Trial Judge can request that the Trial Chamber initiate proceedings *in absentia*. On 23 November 2011, the Trial Chamber adjourned pending further written submissions from the Prosecutor, the four Accused, the Defence Office and potential written responses from the Prosecutor-General of Lebanon.

On 19 August 2011, the Tribunal established jurisdiction over three attacks relating to Marwan Hamadeh, George Hawi and Elias El-Murr (STL-11–02).

In *re: Application of El Sayed*, Mr. El Sayed sought the disclosure to him of documents relating to his previous detention in Lebanon as part of the investigation into the 2005 assassination of former Prime Minister Hariri, which were held by the Prosecutor. On 12 May 2011, the Pre-Trial Judge issued a decision requiring the Prosecutor to disclose the statements of certain persons who had been interviewed during the mandate of the United Nations International Independent Investigation Commission (UNIIIC). The Prosecutor appealed the decision. On 7 October 2011, the Appeals Chamber found that the statements of certain interviewees must be provided to Mr. El Sayed, as ordered by the Pre-Trial Judge—a short delay being necessary only to consider whether the redactions proposed by the Prosecutor were not inconsistent or incomplete. The Appeals Chamber sent the file back to the Pre-Trial Judge for further consideration.

1. Judgments

No judgments were delivered by the Trial Chamber or the Appeals Chamber of the Special Tribunal in 2011.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

A. The Netherlands

*1. Judgment of the Court of Appeal of The Hague, LJN: BR5386 of 5 July 2011 (Mustafić et al.)**

Attribution of responsibility for acts towards third parties—Draft Articles on the responsibility of international organizations of the International Law Commission (ILC)—If a State places troops at the disposal of the United Nations for purposes of a peacekeeping mission, the question as to whom wrongful conduct of such troops should be attributed depends on which party exercises "effective control" over the relevant conduct—Violation of the right to life and prohibition on inhuman treatment— Interpretation of article 171 (1) of the Act on Obligations of Bosnia and Herzegovina— Failure to institute criminal proceedings

[. . .]

Assessment of the appeal

[. . .]

1.3 The Court proceeds on the assumption that the following facts, which have been argued and have not or not sufficiently been contested or that resulted from the exhibits which were not contradicted, have been established between the parties. In chronological order these facts will be mentioned below.

The facts

2.1 In 1991, the Republics of Slovenia and Croatia declared their independence from the Socialist Federal Republic of Yugoslavia. As a result from the fighting that started especially in Croatia, the Security Council of the United Nations decided to set up the United Nations Protection Force (hereinafter: UNPROFOR), with its headquarters in Sarajevo.

2.2 On 3 March 1992, the Republic of Bosnia and Herzegovina also declared its independence from the Socialist Federal Republic of Yugoslavia. Population groups of Muslims and Serbs were both living in Bosnia and Herzegovina. After the Bosnian Serbs had declared their independence from the Republika Srpska (Serb Republic), fighting started among others between the army of Bosnia and Herzegovina on the one

* Translation provided by the Government of the Netherlands and edited by the Secretariat of the United Nations. See too Judgment of the Court of Appeal of The Hague, LJN: BR 5388 of 5 July 2011 (Nuhanović), not reproduced herein.

hand and the Bosnian-Serb army on the other. In relation to these fights the Security Council increased the presence of UNPROFOR and extended its mandate to Bosnia and Herzegovina by Resolution 758 of 8 June 1992.

2.3 Srebrenica is a city situated in eastern Bosnia and Herzegovina. Due to the continuing armed conflict, a Muslim enclave came into existence in Srebrenica and its surroundings. From the beginning of 1993, the Srebrenica enclave was surrounded by the Bosnian Serb Army.

2.4 On 16 April 1993, the UN Security Council adopted Resolution 819, that among other matters included the following:

> "1. Demands that all parties and others concerned treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or any other hostile act;
>
> 2. Demands also to that effect the immediate cessation of armed attacks by Bosnian Serb paramilitary units against Srebrenica and their immediate withdrawal from the areas surrounding Srebrenica;
>
> (. . .)
>
> 4. Requests the Secretary-General, with a view to monitoring the humanitarian situation in the safe area, to take immediate steps to increase the presence of UNPROFOR in Srebrenica and its surroundings; demands that all parties and others concerned cooperate fully and promptly with UNPROFOR towards that end; and requests the Secretary-General to report urgently thereon to the Security Council;
>
> 5. Reaffirms that any taking or acquisition of territory by the threat or use of force, including through the practice of "ethnic cleansing", is unlawful and unacceptable;
>
> 6. Condemns and rejects the deliberate actions of the Bosnian Serb party to force the evacuation of the civilian population from Srebrenica and its surrounding areas as well as from other parts of the Republic of Bosnia and Herzegovina as part of its overall abhorrent campaign of 'ethnic cleansing';"

2.5 Pursuant to Resolution 824 of the Security Council of 6 May 1993, the number of safe areas was increased.

2.6 On 15 May 1993, the UN and Bosnia and Herzegovina signed the Agreement on the status of the United Nations Protection Force in Bosnia and Herzegovina (hereinafter: SOFA). Art. 6 of the SOFA stipulated that "the Government [Court: of Bosnia and Herzegovina] undertakes to respect the exclusively international nature of UNPROFOR."

2.7 In Resolution 836 of 4 June 1993, the UN Security Council decided among other matters:

> "4. Decides to ensure full respect for the safe areas referred to in Resolution 824 (1993);
>
> 5. Decides to extend to that end the mandate of UNPROFOR in order to enable it, in the safe areas referred to in Resolution 824 (1993), to deter attacks against the safe areas, to monitor the cease-fire, to promote the withdrawal of military or paramilitary units other than those of the Government of the Republic of Bosnia and Herzegovina and to occupy some key points on the ground, in

addition to participating in the delivery of humanitarian relief to the population as provided for in Resolution 776 (1992) of 14 September 1992;

(. . . .)

8. Calls upon Member States to contribute forces, including logistic support, to facilitate the implementation of the provisions regarding the safe areas, expresses its gratitude to Member States already providing forces for that purpose and invites the Secretary-General to seek additional contingents from other Member States;

9. Authorizes UNPROFOR, in addition to the mandate defined in Resolutions 770 (1992) of 13 August 1992 and 776 (1992), in carrying out the mandate defined in paragraph 5 above, acting in self-defense, to take the necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties or to armed incursion into them or in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR or of protected humanitarian convoys;

10. Decides that, notwithstanding paragraph 1 of Resolution 816 (1993), Member States, acting nationally or through regional organizations or arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures, through the use of air power, in and around the safe areas in the Republic of Bosnia and Herzegovina, to support UNPROFOR in the performance of its mandate set out in paragraphs 5 and 9 above;".

2.8 In his report dated 14 June 1993, the UN Secretary-General provided an analysis of the options for the implementation of Resolution 836. The report includes the following:

"5. A military analysis by UNPROFOR has produced a number of options for the implementation of Resolution 836 (1993), with corresponding force levels. In order to ensure full respect for the safe areas, the Force Commander of UNPROFOR estimated an additional troop requirement at an indicative level of approximately 34,000 to obtain deterrence through strength. However, it would be possible to start implementing the Resolution under a "light option" envisaging a minimal troop reinforcement of around 7,600. While this option cannot, in itself, completely guarantee the defense of the safe areas, it relies on the threat of air action against any belligerents. Its principle advantage is that it presents an approach that is most likely to correspond to the volume of troops and material resources which can realistically be expected from Member States and which meet the imperative need for rapid deployment. (. . .)

6. This option therefore represents an initial approach and has limited objectives. It assumes the consent and cooperation of the parties and provides a basic level of deterrence, with no increase in the current levels of protection provided to convoys of the Office of the United Nations High Commissioner for Refugees (UNHCR). It does however maintain provision for the use of close air support for self-defense and has a supplementary deterrent to attacks on the safe areas. (. . .)".

2.9 In Resolution 844 of 18 June 1993, the Security Council decided to strengthen UNPROFOR according to the recommendation of the Secretary-General in his report of 14 June 1993 under 6.

2.10 On 3 September 1993, the Dutch Permanent Representative to the United Nations offered a battalion of the Airborne Brigade to the Military Adviser of the UN Secretary-General mainly for the implementation of Resolution 836 regarding the safe areas. That proposal was repeated to the Secretary-General by Defense Minister Ter Beek on 7 September 1993. The Secretary-General accepted this proposal on 21 October 1993.

2.11 On 3 March 1994, the Dutch battalion of the Airborne Brigade ("Dutchbat") relieved the Canadian detachment that was present in Srebrenica. The main force of Dutchbat was stationed in the Srebrenica enclave. One infantry company was quartered in the city of Srebrenica, the other units were quartered outside of the city at an abandoned industrial premises in Potocári (the "compound").

2.12 In the period that is relevant for this case, the following persons held the positions outlined below.

The (French) Lieutenant General Janvier was Force Commander of UNPF, since 1 April 1995 the new name of the original UNPROFOR. The UNPF-headquarters were located in Zagreb, Croatia.

The (British) Lieutenant General Smith was Commander of BH Command, since May 1995 named HQ UNPROFOR. Deputy Commander of HQ UNPROFOR was the (French) General Gobillard. The (Dutch) Brigade General Nicolai was Chief of Staff of HQ UNPROFOR. His Military Assistant was the (Dutch) Lieutenant Colonel De Ruiter. HQ UNPROFOR was situated in Sarajevo, Bosnia and Herzegovina.

Three regional headquarters resorted under HQ UNPROFOR, including the North East Sector in Tuzla. The (Norwegian) Brigade General Haukland was in charge of North East Command. The (Dutch) Colonel Brantz was Chief of Staff/Deputy Commander of North East Command. The North East Sector included Tuzla, Zepa and Srebrenica.

Commander of Dutchbat was Lieutenant Colonel ('overste') Karremans. Major Franken was Deputy Commander.

2.13 Dutchbat was bound by the rules of conduct and instructions set out by the UN: the Rules of Engagement (drawn up by the Force Commander), the Standing Operating Procedures and the Policy Directives. The Ministry of Defense laid down these rules of conduct and instructions, as well as a number of existing rules set out especially for this mission, in the (Dutch) Standing Order 1 (NL) UN Infbat. This Standing Order includes the instruction that after the provision of aid no persons may be sent away if this results in physical threat.

2.14 On 5 and 6 July 1995, the Bosnian Serb Army under the command of General Mladić started an attack on the Srebrenica enclave. On 11 July 1995, Srebrenica was taken by force of arms by the BSA forces. The Dutchbat troops who were still in town withdrew into the compound in Potocari. Subsequently a stream of refugees started leaving the city of Srebrenica. More than 5000 of these refugees were admitted into the compound by Dutchbat, including 239 able-bodied men (in other words between the ages of 16 and 60). The refugees within the compound were accommodated in an abandoned factory hall. A

far larger number of refugees (probably around 27,000) had to stay in Potocari outside the compound in open air.

2.15 On 11 July 1995, at the end of the afternoon Defense Minister Voorhoeve telephoned General Nicolai. Nicolai told Voorhoeve that they did not see any other solution in Sarajevo than to evacuate the refugees. Voorhoeve agreed to that.

2.16 On the same day at 18.45 hours, Karremans received a fax from General Gobillard, with the following instructions:

> "a. Enter into local negotiations with BSA forces [the Bosnian Serb Army, Court] for immediate cease-fire. Giving up any weapons and military equipment is not authorized and is not a point of discussion.
>
> b. Concentrate your forces into the Potacari Camp, including withdrawal of your OPs. Take all reasonable measures to protect refugees and civilians in your care.
>
> c. Provide medical assistance and assist local medical authorities.
>
> d. Continue with all possible means to defend your forces and installation from attack. This is to include the use of close air support if necessary.
>
> e. Be prepared to receive and coordinate delivery of medical and other relief supplies to refugees."

2.17 In the evening of 11 July 1995, General Janvier received the Dutch Defense Chief of Staff Van den Breemen and Deputy Commander of the Royal Netherlands Army Van Baal, who had travelled from the Netherlands to Zagreb in order to hold consultations on the situation that had arisen in Srebrenica. The persons who took part in that meeting agreed that both Dutchbat and the refugees needed to be evacuated, whereby first of all the UNHCR would be responsible for the evacuation of the refugees.

2.18 In the evening of 11 July 1995, Karremans held two meetings with Mladić, the second time he was accompanied by Nesib Mandžic as representative of the local population. During the first meeting Mladić said that the Muslim civilian population was not the target of his action, but actually that he wanted to offer them help. He asked Karremans if he could request Nicolai to send buses and Karremans replied that he thought that he could arrange for that.

2.19 According to the script of the video recordings that were made of the first of these talks between Karremans and Mladić, among other things Karremans said the following:

> "I had a talk with general Nicolai 2 hours ago.
>
> And, also with the national authorities.
>
> About the request on behalf of the population.
>
> It's a request, because I'm not in a position to demand anything.
>
> We, the Command in Sarajevo has said that the enclave has been lost.
>
> And that I've been ordered by BH Command . . .
>
> To take care of all the refugees.
>
> And are now approximately 10,000 women and children within the compound of Potocari.

And the request of the BH Command is to let's say to negotiate or ask for withdraw of the Battalion and withdraw of those refugees and if there are possibilities to assist that withdrawal.

(. . .)

So, that's why I've been asked by General Nicolai

and more by General Janvier

In Sarajevo

And also by the national authorities

To stop on behalf of the population what has been done, let's say, in the last six days."

2.20 In the early morning of 12 July 1995, Karremans spoke on the telephone to Voorhoeve. Voorhoeve said to Karremans: "save as much as possible".

2.21 In the morning of 12 July 1995, Karremans held a third and final meeting with Mladić, whereby this time Karremans was not only accompanied by Mandžic but also by Ibro Nuhanović and Camila Omanovic. During this meeting Mladić said that he could arrange for vehicles himself. He also mentioned the order in which the refugees were to be evacuated: first the wounded, then the weaker persons, next the stronger women, children and elderly and finally the men between the ages of 17 and 70. The men would first be screened by the Bosnian Serbs to see whether there were any war criminals among them.

2.22 During one or more of his talks with Mladić, Karremans said that he wanted to take the local staff along with Dutchbat. Mladić agreed to that. Consequently Dutchbat drew up a list of approximately 29 persons that belonged to their local staff and who would be evacuated along with the Dutch battalion.

2.23 After Minister Voorhoeve had been informed about this last meeting, Voorhoeve instructed his staff to inform UNPROFOR that under no circumstances Dutchbat was allowed to cooperate in a separate treatment of the men. According to Nicolai he also reported this last instruction to Karremans, but Karremans never confirmed this. According to Karremans this did not present any problems because there would be hardly any able-bodied men on the compound. Voorhoeve gave the same instruction to Lt. Col. De Ruiter in Sarajevo.

2.24 At the beginning of the afternoon of 12 July 1995, buses and trucks of the Bosnian Serbs started to arrive outside the compound in order to pick up the refugees. According to Mladić, who was present around that time, the refugees had nothing to fear, they would be taken to Kladanj [in the Muslim Croatian Federation, Court]. As of 14.00 hours the refugees that were staying outside the compound and that wanted to leave because of their hopeless situation (there was a 'run' on the buses) were deported by these vehicles.

2.25 On 12 July 1995, the UN Security Council adopted Resolution 1004 (1995), that included the following:

"1. Demands that the Bosnian Serb forces cease their offensive and withdraw from the safe area of Srebrenica immediately;

(. . .)

6. Requests the Secretary-General to use all resources available to him to restore the status as defined by the Agreement of 18 April 1993 of the safe area of Srebrenica in

accordance with the mandate of UNPROFOR, and calls on the parties to cooperate to that end;".

2.26 In the morning of 13 July 1995, the transport of the refugees by buses and trucks was continued. Towards the end of that morning all refugees that were staying outside the compound had been deported. Subsequently that afternoon the refugees that were staying inside the compound were also transported by the vehicles provided for by the Bosnian Serbs.

2.27 During the period in which the refugees (both from outside and inside the compound) were deported, the Dutchbat troops received signals at different points in time that the Bosnian Serbs were committing crimes against the male refugees in particular. The testimonies rendered by the persons involved are not identical in every way, but nevertheless they do provide an adequate basis for the Court to be able to conclude that before the end of the afternoon of 13 July 1995 in any case the following had been observed:

(i) Lieutenants Rutten and Oosterveen (adjutant personnel officer) each found 9 or 10 bodies of murdered men and reported this to Karremans in the afternoon of 12 July, although it has not become evident whether both of them had seen the same dead bodies;

(ii) In the evening of 12 July 1995, it had become clear to Franken and Karremans that the buses transporting the male refugees did not arrive in Kladanj;

(iii) The (able-bodied) male refugees were separated from the others and taken to the "white house" at 300 or 400 metres outside the compound; Franken increasingly received reports that the men were interrogated there by use of physical violence;

(iv) Oosterveen heard gun shots with pauses in between, "to execute people", according to him no rattling action fire or normal sounds; it was not necessary to report this because everybody was able to hear this;

(v) On 12 or 13 July 1995, Franken had ordered to draw up a list with the names of the 239 men, hoping this list would have a protective effect;

(vi) In the morning of 13 July 1995, Rutten discovered that outside the "white house" where the men had been taken, all their personal belongings, including identity papers, had been lumped together in a pile; inside the "white house" he found Muslim men with mortal fear in their eyes; Rutten reported this to Karremans;

(vii) Karremans also received a report on the execution of an individual Muslim man.

2.28 Rizo Mustafić (hereinafter: Mustafić) was Mehida Mustafić's husband and the father of Damir and Alma. From the beginning of 1994, Mustafić was working as an electrician for Dutchbat. He was employed by the municipal administration of Srebrenica (Opština) and had been seconded by the Opština to Dutchbat. After the fall of Srebrenica, Mustafić had sought refuge in the compound together with Mehida Mustafić, Damir and Alma. They were staying in the office from where Mustafić used to work.

2.29 On 13 July 1995, Mustafić expressed his intention that he wanted to stay at the compound together with his family. Aide-de-camp Oosterveen reacted to this by saying that that was not possible because everybody had to leave, with the exception of UN personnel. At the end of the afternoon on 13 July 1995, after the remaining refugees had left the compound, Mustafić also left with his family. Outside the gate of the compound

Mustafić was separated from his family by the Bosnian Serbs, he was deported and killed by the Bosnian Serb Army or related paramilitary groups; his family survived.

2.30 On 13 July 1995, at 20.00 hrs, Karremans received a fax from Lieutenant Colonel De Ruiter ("releasing officer": Nicolai) with the subject: Guidelines for negotiations with General Mladić. This fax includes the following:

> "Regarding the negotiations between CO-Dutchbat and Gen Mladić about the possible conditions in relation to the evacuation of Dutchbat from the enclave of Srebrenica the following guidelines will apply.
>
> (. . . .)
>
> 6. Taking along of locals employed by the UN is required.
>
> (. . . .)
>
> 8. In case of a deadlock in the negotiations give immediate feedback to Gen Nicolai (authorized negotiator on behalf of NL Government and UNPROFOR."

2.31 Subsequently, also on 13 July 1995, Karremans sent a fax to Mladić in which he wrote among other matters:

> "1. At 2000 hrs, I did receive a message from the authorities of the Netherlands thru HQ UNPROFOR in SARAJEVO concerning the evacuation of Dutchbat. I have been ordered to pass the following guidelines to you.
>
> 2. Guidelines:
>
> a. Dutchbat should leave POTOCARI with (. . .)
>
> (. . . .)
>
> d. Personnel assigned to the UN and to Dutchbat such as interpreters and the people from MSF and UNHCR."

2.32 On 19 July 1995, General Smith signed an agreement with Mladić that included the following:

> "7. To provide the UNPROFOR displacement (including all military, civilian and up to thirty locally-employed personnel) from Potocari with all UNPROFOR weapons, vehicles, stores and equipment, through Ljubovija, by the end of the week, according to following displacement order:
>
> a. Evacuation of wounded Muslims from Potocari, as well as from the hospital in Bratunac.
>
> b. Evacuation of women, children and elderly Muslims, those who want to leave.
>
> c. Displacement of UNPROFOR to start on 21 July 95 at 1200 hrs.
>
> The entire operation will be supervised by General Smith and General Mladić or their representatives."

2.33 Dutchbat left the compound on 21 July 1995. The Bosnian Serbs did not submit the convoy to any inspections.

2.34 The largest part of the able-bodied men that were deported by the Bosnian Serbs was killed by them. In total the Bosnian Serb actions caused the death of probably over 7.000 men, many of them by mass executions.

The claim and the judgment of the District Court

3.1 Mustafić et al. believe that the State failed in the performance of its agreement with Mustafić, which implied that the Dutch troops would protect Mustafić by letting him stay inside the compound and subsequently evacuate him together with the Dutch battalion. In addition Mustafić et al. hold the opinion that the State acted wrongfully. In the first instance they argued that these wrongful acts consisted of the following elements: (i) the State sent Mustafić away from the compound and did not take him along when Dutchbat was evacuated; (ii) the State should have intervened when Mustafić was separated from his wife and children; (iii) the State failed to report about the human rights violations of which it was aware. According to Mustafić et al. the State's conduct constitutes a breach of the protection agreement between Mustafić and the State and moreover they argue that it is wrongful since it is contrary to the law of the Federal Republic of Bosnia and Herzegovina, as laid down in the "Act on Obligations", and contrary to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Convention on Civil and Political Rights (ICCPR), the Genocide Convention, art. 1 of the Geneva Conventions, as well as the applicable instructions for UNPROFOR.

3.2 Mustafić et al. demanded in the first instance: (i) to rule that the State is liable for the damages resulting from breach of contract with Mustafić, alternatively from a wrongful act towards Mustafić and/or Mehida Mustafić, and/or Alma and/or Damir; (ii) to rule that the State is liable to pay compensation to Mehida Mustafić, and/or Alma, and/or Damir for damages that they have suffered and will yet suffer; and (iii) to order the State to pay the costs of the proceedings, or at least to compensate the costs.

3.3 The District Court disallowed the claims of Mustafić et al. The judgment of the District Court can be summarized as follows.

[. . .]

3.5 As to the merits of the case the District Court considered in the first place that in all their allegations Mustafić et al. are concerned with the question whether the State made enough efforts to prevent the death of Mustafić and that when answering this question no specific significance should be attributed to the Genocide Convention, besides the ECHR and the ICCPR. The fact that a positive obligation is vested in the State to protect the right to life can already be inferred from these last two human rights conventions.

3.6 The District Court concluded from the records of the provisional witness examinations and the NIOD report that already shortly after the fall of Srebrenica a list was drafted of persons who, together with Dutchbat and the UN mission of military observers (UNMO), would receive a special status during the evacuation. However, the criteria for admission to this list, which later became known as "the list of 29", were not absolutely clear or were not applied quite consistently. The District Court deemed that without providing any further evidence no definite decision could be given on the appearance of Mustafić's name on the "list of 29".

3.7 Furthermore, the District Court took the grounds that Mustafić et al. did not sufficiently substantiate their claim that the Dutch authorities (consisting of military force commanders and members of the Government) acted wrongfully towards Mustafić, for example by giving special instructions regarding the evacuation of able-bodied men. It is true that the Dutch Government did have involvement in the fate of the population (e.g.

on 12 July 1995, Minister Voorhoeve gave the instruction to Dutchbat not to cooperate in the separation of men and women), but according to the District Court this does not give evidence of wrongful manipulation.

3.8 Subsequently, the District Court assessed whether the State could be attributed liability for the conduct of Dutchbat. In its primary defense the State argued that Dutchbat's conduct must be attributed exclusively to the United Nations and therefore not (also) to the State. The District Court considered that this question had to be judged in accordance with international public law standards, because the Dutch troops in Srebrenica were charged with the implementation of an order by the UN Security Council. Only in case of mere individual behaviour by members of the troops "off-duty" or when agreements of purely private law nature are concerned, attribution in accordance with national law should be applicable, but in the opinion of the District Court these situations did not occur.

3.9 The defense which was put forward by the State that the actions of Dutchbat must exclusively be attributed to the UN, was allowed by the District Court. The arguments that served as a basis for its judgment can be summarized as follows:

(i) In accordance with the existing international practice and the "draft articles" of the International Law Commission (ILC), the conduct of troops, that are assigned to the UN within the scope of participation in a peacekeeping mission based on chapter VII of the United Nations Charter, must be attributed to the UN, because the "operational command and control" over those troops is transferred to the UN (4.10);

(ii) This transfer does not include personnel matters of the dispatched troops or the material logistics of the deployed detachment, nor the decision about whether or not to withdraw these troops (4.11);

(iii) However, Mustafić had not been deployed by the Netherlands, and the ultimate right of the Netherlands to withdraw Dutchbat from Bosnia and Herzegovina should be distinguished from the right of the United Nations at issue here to decide about the evacuation of UNPROFOR units from Srebrenica (4.12);

(iv) Therefore, the reprehended acts or omissions of Dutchbat should be attributed strictly to the UN (4.13); possible exceptions to this rule of exclusive attribution did not occur (4.16.5);

(v) In relation to this attribution there is no difference in the event of a violation of 'common' standards or of fundamental standards as laid down in the EHCR, the ICCPR, the Genocide Convention and conventions pertaining to international humanitarian law to which the Netherlands is a party (4.14.1);

(vi) The question whether obligations based on the aforesaid conventions should prevail over the obligations that the State is subject to, pursuant to the UN Charter, is not an issue here because making troops available to the UN for a particular mission is a non-obligatory act (4.14.1);

(vii) The UN are not a party to the ECHR; moreover, Mustafić did not come under the jurisdiction of a contracting party in the terms of article 1 ECHR, since the events that Mustafić et al. represent as violations of the ECHR took place in the sovereign state of Bosnia and Herzegovina and neither the UN nor the State exercised "effective overall control" over a part of the territory of that state (4.14.3);

(viii) Even if it were true that the members of Dutchbat seriously defaulted or that there was insufficient supervision within Dutchbat on compliance with fundamental standards, this does not mean that Dutchbat's conduct must not be attributed to the UN; it was not argued that the United Nations and the State had agreed that the State would assume liability towards third-parties (like Mustafić) in the event of violations of fundamental standards, therefore the attribution to the UN of Dutchbat's conduct rules out attribution to the State of the same conduct (4.15);

(ix) There could be a reason for attribution of Dutchbat's conduct to the State in case the State had violated the UN command structure, if Dutchbat had been instructed by the Dutch authorities to ignore UN orders or to go against them and Dutchbat had behaved in accordance with this instruction from the Netherlands, or if Dutchbat to a greater or lesser extent had backed out of the structure of UN command, with the consent of those in charge in the Netherlands, and considered or demonstrated themselves for that part as exclusively under the command of the competent authorities in the Netherlands; however, there are insufficient grounds for attribution to the State in case of parallel instructions (4.16.1);

(x) There are insufficient grounds for the point of view that Dutchbat, by assisting in the evacuation of the citizens of Srebrenica, obeyed an order given by the State which should be considered as an infringement of the UN command structure; even if Nicolai did order the evacuation of the civilians, this does not mean that he did so strictly or for the most part on the authority of the Netherlands; the fact that Voorhoeve agreed that the citizens of Srebrenica who had fled would be evacuated, rather indicates that the UN structure of command was respected; at most, parallel instructions were issued; this does not detract from the fact that, according to the statement given by Nicolai, Voorhoeve thus provided political cover for providing assistance in ethnic cleansing "contrary to UN policy", for Nicolai also stated that the basic decision to evacuate came from Sarajevo, so from Gobillard; moreover, there is no evidence whatsoever that the State gave any instructions as to the manner of evacuation (4.16.5).

3.10 Finally, the District Court considered that it is true that the circumstances on the compound, due to the lack of food and medical facilities and with high temperatures, were hopeless at the time. Nevertheless, there are good arguments in support of the claim that the passive attitude of Dutchbat toward the separate deportation of the able-bodied men by the Bosnian Serbs on 12 and 13 July 1995, was not in conformity with the specific instruction to protect civilians and refugees as much as possible in the altered circumstances, an instruction Karremans had received from Gobillard—so from the UN structure of command—on 11 July 1995. However, the District Court considers that this is of no avail to Mustafić et al., because the acts and omissions of Dutchbat during the evacuation should be considered as those of the United Nations.

3.11 On appeal Mustafić et al. increased their claim. They now demand:

I. To rule:

— That the State is liable for the damages resulting from breach of contract between the State and Mustafić and alternatively from a wrongful act towards Mustafić and/or Mustafić et al.;

— That the State is liable to pay compensation to Mustafić et al. for damages that they have suffered or will yet suffer;

II. To rule that the State violated the Genocide Convention, the ECHR and the ICCPR by not instituting criminal proceedings regarding the violations of these conventions committed by the Dutch troops as put down in ground for appeal 14;

III. To rule that the State is liable for the damage that Mustafić et al. suffered by the violation of Mustafić et al.'s right to a fair trial, in any case to rule that the State violated this right as put down in ground 15;

IV. To order the State to pay the costs of the proceedings in both instances, at least to compensate the costs of the parties.

Outline of the grounds for appeal

4.1 Ground 1 relates to the facts established by the District Court and has been discussed in the above. In so far as this ground presents certain facts that the Court of Appeal deems important in relation to its judgment, it will address these matters below.

4.2 In ground 2, Mustafić et al. argue that the District Court's interpretation of their allegations against the State was far too limited. Therefore, the Court of Appeal will start from the grievances as phrased by Mustafić et al. in the appeal proceedings and which have been summarized hereafter under 6.1.

4.3 Grounds 3 through 9 and 11 through 13 are directed against the judgment of the District Court that the conduct of Dutchbat must be attributed exclusively to the UN, whereby ground 14 also relates to the protection agreement that the State concluded with Mustafić according to Mustafić et al. . The Court of Appeal will first of all discuss these grounds for appeal jointly, in so far as possible, in the section below.

4.4 In ground 10, Mustafić et al. argue that the District Court was wrong in its consideration that no individual significance should be attributed to the Genocide Convention, besides the ECHR and the ICCPR; according to the appellants, the State is liable for being an accessory to genocide and also for having neglected its duty to prevent genocide.

4.5 In ground 14 Mustafić et al. argue additionally that the State violated the Genocide Convention, the ECHR and the ICCPR by not instituting criminal proceedings with respect to the actions of the Dutch troops that sent Mustafić away from the compound.

4.6 Ground 15 regards the substitution of mr. Punt. Mustafić et al. argue that by replacing mr. Punt, the District Court violated a legal principle that was so fundamental that one can no longer consider that the hearing of this case by the District Court constituted a fair and impartial trial.

Attribution of the conduct of Dutchbat; grounds 3–9 and 11–13

5.1 Grounds 3–9 and 11–13 put forward the question whether the acts or omissions (herinafter also: the conduct) of Dutchbat which Mustafić et al. attribute to the State, should be attributed to the UN (opinion State and District Court) or to the State (opinion Mustafić et al.), whereby Mustafić et al. also consider the possibility that this conduct is to be attributed both to the UN and the State.

5.2 Primarily, Mustafić et al. argue (ground 4) that the Dutch troops entered into a protection agreement with Mustafić by telling Mustafić repeatedly that his name was on the list of local personnel and by doing so they offered him to stay at the compound on behalf of the State, which offer was accepted by Mustafić. According to Mustafić et al., pursuant to art. 4 paragraph 1 of the European Convention on the Law Applicable to Contractual Obligations of 19 June 1980, Dutch law is applicable to this agreement. By informing Mustafić that he had to leave the compound, the Dutch troops failed the performance of that contract which contained a special obligation to provide protection. Being the employer of the Dutch troops, the State is liable for this breach of contract. Alternatively, if the Court would not assume the breach of contract, the State is liable on the basis of a wrongful act. Attribution of this wrongful act should not take place in accordance with the practices of international customary law, but according to national Bosnian law. Mustafić et al. therefore argue that the parties agree to the fact that the legal relationship between Mustafić and the State resulting from a wrongful act, is governed by the law of Bosnia and Herzegovina. According to Mustafić et al., international customary law has no direct effect under the law of Bosnia and Herzegovina. Consequently Mustafić et al. believe that this means that based on the Bill on Conflicts of Law in Tort (WCOD) [Wet Conflictenrecht Onrechtmatige Daad] Bosnian law is applicable to the legal relationship between Mustafić and the State resulting from a wrongful act. Pursuant to the WCOD, the only law that can be applied is the national law of a state and not international (customary) law, according to Mustafić et al.

5.3.1 This argument fails. The Court puts first that the facts as represented by Mustafić et al. cannot form the basis for drawing the conclusion that a "protection agreement" had been concluded between Mustafić and the State. Even if it were true that Mustafić's name appeared on the "list of 29", that he had been informed about this and that both Dutchbat Command and Mustafić on the basis of that information assumed that Mustafić was allowed to stay on the compound and would be given special protection, this does not imply that an agreement to that effect had been concluded, because there is nothing to show that Dutchbat or the State had wanted to undertake any legally binding obligation towards Mustafić and considering the circumstances, this was not obvious either. In reasonableness, Mustafić should not have interpreted this course of events in such a way that the State had the intention to conclude such an agreement with him.

5.3.2 Regarding the attribution of the alleged wrongful act, the Court holds the opinion that the argument of Mustafić et al., that attribution of this wrongful act should be done according to the rules of national Bosnian law, fails. The question here is not whether the Dutchbat troops acted wrongfully with respect to Mustafić, but whether, based on an agreement concluded or not between the State and the UN (whether that agreement had indeed been concluded, at least what the contents of this agreement were, is the subject of ground 5) for the deployment of troops, the actions of these troops that are placed at the disposal of the UN should be attributed to the State, the UN or possibly to both. The question whether such an agreement between a sovereign state and an international organization like the UN (which are both legal persons under international law) had been concluded, under which terms and what consequences this had, and also the question which party was liable under civil law for the conduct of Dutchbat, should be judged according to international law. In this respect it has no importance that international law has no direct effect under the national law of Bosnia and Herzegovina.

5.4 However, even if the attribution of Dutchbat's conduct should exclusively be assessed according to national law (in this case the law of Bosnia and Herzegovina), this ground does not succeed. Also in that case the question arises which party in the given context, where a state makes troops available to the UN within the scope of an operation under chapter VII of the UN Charter, is liable under civil law for the conduct of those troops. Since no submission was made by Mustafić et al. and the advice from the International Judicial Institute did not produce any evidence to the Court that the law of Bosnia and Herzegovina contains a specific rule for that situation, the Court finds it obvious and in accordance with Bosnian law that in providing an answer to the above mentioned question harmonization is sought with international law, under which the troops were placed at the disposal of the United Nations.

5.5 In connection with ground 4, the State pointed out that it pleaded in the first instance that the actions of Dutchbat in Bosnia and Herzegovina should only be judged in accordance with international law and therefore not according to any national law, and that it maintains this point of view in the appeal proceedings. The Court deems that this point of view is not correct. The actions of Dutchbat in Bosnia and Herzegovina, notwithstanding the scope of possible immunities, which in this case do not occur with regards to the State, are not released from the scope of the national law of that country and may in principle give rise to (among other matters) liability resulting from a wrongful act under Bosnian law. In its report submitted as evidence by the State (exhibit 29 State), the Advisory Committee on Questions pertaining to International Law (CAVV) [Commissie van Advies voor Volkenrechtelijke Vraagstukken] also proceeds on the assumption that such liability may arise (paragraph 2.5.2). For that matter, Mustafić et al. placed the violations of international law standards at the basis of their claims as well. As will appear hereinafter, an examination according to these last standards does not lead to a substantially different judgment as opposed to an assessment only according to the law of Bosnia and Herzegovina. This means that the State does not have any interest in this argument.

5.6 In ground 5, Mustafić et al. contest the opinion of the District Court that participation in a peacekeeping mission of the United Nations pursuant to chapter VII of the UN Charter implies the transfer of "command and control" over the troops that have been placed at the disposal of the UN. According to Mustafić et al. "command and control" can only be transferred by an explicit act based on an agreement and they claim that there was no such agreement in this case. No submission was made by the State, nor did they produce sufficient evidence to substantiate that such a transfer of "command and control" had taken place. For that reason Mustafić et al. conclude that the wrongful acts of Dutchbat must be attributed to the State.

5.7 The ground fails, for such an agreement is included in the facts as described in the above under 2.10. After all, this paragraph shows that on behalf of the Dutch Government a battalion of the Airborne Brigade was offered to the Military Adviser of the UN Secretary-General and afterwards to the Secretary-General himself, in particular for the implementation of Resolution 836 and that this offer was accepted by the Secretary-General. No special procedural requirements are applicable to this kind of agreement and that is not the argument put forward by Mustafić et al. From an agreement concluded in this manner, no other reasonable conclusion can be drawn than that it was the intention of the parties that the Dutch battalion would operate according to the UN command

structure and would therefore, for the execution of the peacekeeping mission, be placed under the ultimate authority of the Security Council. In Resolution 743 (1992) (exhibit 13 State) of the Security Council, which provided for the creation of UNPROFOR, it was stipulated that UNPROFOR would be resorting under the "authority" of the Security Council. This is confirmed because subsequently Dutchbat was indeed placed under UN command and operated accordingly. For that reason the Court concludes that Dutchbat was placed under the command of the United Nations. Whether this also implies that "command and control" had been transferred to the UN, and what this actually means, can remain an open question because, as will appear hereafter, Mustafić et al. are right in asserting that the decisive criterion for attribution is not who exercised "command and control", but who actually was in possession of "effective control".

5.8 In ground 9, Mustafić et al. argue that in relation to the criterion for the attribution of the conduct of Dutchbat to the UN or the State, the question should be who had "effective control" and not, as assumed by the District Court, who exercised "command and control". This ground for appeal is correct. In international law literature, as also in the work of the ILC, the generally accepted opinion is that if a State places troops at the disposal of the UN for the execution of a peacekeeping mission, the question as to whom a specific conduct of such troops should be attributed, depends on the question which of both parties has "effective control" over the relevant conduct.

Cf. M. Hirsch, The Responsibility of International Organizations Towards Third Parties: Some Basic Principles (1995) p. 64; F. Messineo, NILR 2009 p. 41–42; A. Sari, Human Rights Law Review 2008 p. 164; T. Dannenbaum, Harvard International Law Journal 2010 p. 140–141. This opinion has also found expression in the draft articles on the Responsibility of international organizations of the ILC, of which Article 6 reads as follows:

> "The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct."

Although strictly speaking this provision only mentions "effective control" in relation to attribution to the "hiring" international organization, it is assumed that the same criterion applies to the question whether the conduct of troops should be attributed to the State who places these troops at the disposal of that other international organization.

5.9 The question whether the State had "effective control" over the conduct of Dutchbat which Mustafić et al. consider to be the basis for their claim, must be answered in view of the circumstances of the case. This does not only imply that significance should be given to the question whether that conduct constituted the execution of a specific instruction, issued by the UN or the State, but also to the question whether, if there was no such specific instruction, the UN or the State had the power to prevent the conduct concerned. Moreover, the Court adopts as a starting point that the possibility that more than one party has "effective control" is generally accepted, which means that it cannot be ruled out that the application of this criterion results in the possibility of attribution to more than one party. For this reason the Court will only examine if the State exercised "effective control" over the alleged conduct and will not answer the question whether the UN also had "effective control".

5.10 When applying the "effective control" criterion it is important to establish that it is not disputed that the state that provides the troops keeps control over the personnel matters of the assigned soldiers, who are and will remain employed by the state, as well as the power to take disciplinary action and start criminal proceedings against these soldiers. It is not disputed either that the state that provides the troops at all times preserves the power to withdraw the troops and to discontinue their participation in the mission.

5.11 Furthermore, the Court attaches importance to the fact that the context in which the alleged conduct of Dutchbat took place differs in a significant degree from the situation in which troops placed under the command of the UN normally operate, as was the issue at stake in the cases Behrami v. France, No. 71412/01 and Saramati v. France, Germany and Norway, No. 78166/01 of the ECtHR (LJN: BB 7360 and BB 3180). After 11 July 1995, the mission to protect Srebrenica had failed. Srebrenica had fallen that day and it was out of the question that Dutchbat, or UNPROFOR in any other composition, would continue or resume the mission. There is no evidence that Resolution 1004 (1995) (see the above under 2.25) resulted in any order to Dutchbat to take up their positions in and around Srebrenica again, nor did the Bosnian Serb Army comply with the Resolution's call to withdraw their troops from Srebrenica. On the contrary, in the evening of 11 July 1995, in joint consultation with Dutch Defense Chief of Staff Van den Breemen, Deputy Commander Van Baal and General Janvier it was decided that there was no sense in using any further violence; see Parliamentary Inquiry Committee Srebrenica, examinations p. 736 (letter from Van den Breemen). The only option was to evacuate Dutchbat and the refugees, and to proceed in such a way that the refugees would not remain unprotected. As Van Baal put it (record of preliminary examination p. 3):

> "Rather leave all at once, not Dutchbat first, possibly one after the other but under the supervision of Dutchbat",

and before the Parliamentary Inquiry Committee (examinations p. 344):

> "Based on this, a few agreements were made by mutual consultation with General Janvier. Dutchbat was going to evacuate with the battalion. The evacuation of 27.000 people was a major operation."

Van den Breemen wrote to the Parliamentary Inquiry Committee (examinations p. 736):

> "So a cease-fire is needed. Dutchbat stays; humanitarian aid; preparations for evacuation. All this had the purport, given the humanitarian situation and the threat from the Serbs, who were capable of doing anything at any moment, that eventually the refugees as well as Dutchbat had to be evacuated."

5.12 The Court can only conclude that the decision for the evacuation of Dutchbat and the refugees resulting from the consultations between Janvier, Van den Breemen and Van Baal was actually taken by mutual agreement between Janvier on behalf of the UN on the one hand and by Van den Breemen and Van Baal on behalf of the Dutch Government on the other. In the opinion of the Court it is not plausible that two of the highest ranking Dutch military officers had only travelled to Zagreb to be informed about what General Janvier, after being told about their wishes, would decide regarding the evacuation. The Court interprets the background of the consultations of that evening in such a manner that, considering the concerns that existed in The Hague for the safety of both Dutchbat and the refugees, in practice they could only take a decision on the evacuation that not

only The Hague but also (the Force Commander of) the UN would approve of. The fact that Gobillard and Nicolai also took the decision to evacuate does not detract from the above conclusion, because what has been decided at the highest level must be decisive. Apparently both the UN and the Dutch Government considered this decision to be of such importance that they left it up to the Force Commander Janvier and two of the highest Dutch military officers. The Dutch Government participated in that decision-making at the highest level. For that matter, as appears from the statement of Nicolai during the preliminary witness examination, the decision taken in Sarajevo only regarded the evacuation of the refugees, not the evacuation of Dutchbat.

5.13 During the preliminary witness examination (court record p. 2), General Nicolai stated the following about the order of 13 July 1995 attached to the court record of his witness examination, which in paragraph 8 refers to Nicolai as "authorized negotiator on behalf of NL Government and UNPROFOR":

> "It was a turning point; Dutchbat's mission had ended and we were going to focus on getting the battalion back to the Netherlands. In itself this is also a national affair, but apart from that there were additional UN interests and that is why I also acted as the authorized representative for UNPROFOR. In that sense, I kind of had a double role.
>
> In this case things went a little further. Normally I did not receive any orders from the Netherlands, but only from the UN. At this moment the Netherlands also participated in the decision-making. I faxed this order to the Infantry Staff and also to DCBC (Crisis Control Centre at the Ministry of Defense) on the 13th in the course of the day, asking whether the Dutch Government could live with this. (. . .) At that moment, the evacuation of the Bosnian population had already been concluded."

Nicolai stated furthermore (court record p. 6):

> "The Hague phoned me, because The Hague was concerned about the fate of the men and that is why we had to make sure in any case that they would not be treated as an individual group. I told them that we had another priority regarding the order in which the evacuation would have to take place, and that we had not actually taken that into account, but that I would pass it on to Karremans. Subsequently, Karremans said that in fact it was not a relevant problem because there were hardly any men. In my opinion it would [the Court reads: be] completely different if the UN would have been in charge of the transport and not the Serbs. This does not matter, because when the Dutch Government says something like that, as a military officer you just carry it out. By the end of the morning of the 12th it became clear to me that the Serbs would be in charge of the transport."

5.14 Former Minister of Defense Voorhoeve stated as a witness (court record p. 6):

> "My telephone call with Karremans on 12 July took place around eight o'clock in the morning. Based on the conversations held before that time, I told Karremans to save as much as possible."

5.15 In connection with page 206 of exhibit 4, attached to the court record of the preliminary witness examination (Court: the examination conducted by the Parliamentary Inquiry Committee) the following question was put to Voorhoeve about the subject of the "Double role of Mr. Nicolai, representative of the UN and the Netherlands" (court record of preliminary witness examination p. 8):

"You said that the UN command structure did not function. What is the relationship between the double role of Nicolai and the non functioning of the UN command structure?"

Voorhoeve answered:

"There was no direct relationship. My observation that the command structure did not function was based on a long period, a whole year, of noticing that certain parts of the command structure in particular did not function. Pointing at the highest national military officer is common use, also in peacekeeping operations that are proceeding well. I don't know whether I expressed my concerns about the Muslim men to Colonel Brantz on the 11th. I remember that the conversation was about the refugees, the population of Srebrenica."

The aforesaid exhibit 4 (the examination of Voorhoeve by the Parliamentary Inquiry Committee, p. 207), includes the following:

"Mr. Rehwinkel: How could Mr. Nicolai in the fax with the guidelines refer to himself as the authorized negotiator for the Netherlands? How was it possible that in the letter to Mladić they spoke of 'a message from the authorities of the Netherlands'?

Mr. Voorhoeve: Because Mr. Nicolai was given a double role as a result of the circumstances. He was the highest in rank of all military officers in the UNPROFOR organization who were located close to the problem. The situation in Srebrenica fell under UNPROFOR Sarajevo. It was logical that the Dutch concerns about the situation were communicated to Mr. Nicolai."

5.16 From what has been established in the above under 2.30 and 2.31 appears furthermore that Karremans received instructions about the evacuation that were jointly issued by Nicolai in his capacity of "authorized negotiator of the NL Government and UNPROFOR", so also on behalf of the Dutch Government. Karremans also interpreted it in this way, given his fax to Mladić in which he wrote:

"(. . .) I did receive a message from the authorities of the Netherlands thru HQ UNPROFOR in SARAJEVO concerning the evacuation of Dutchbat. I have been ordered (. . .)".

(Section underlined by the Court)

5.17 Based on the above, the Court concludes the following. On 11 July 1995, the UN and the Dutch Government took the decision to evacuate Dutchbat together with the refugees. This implied that Dutchbat, after the evacuation had been concluded, would be withdrawn to the Netherlands in the near future. As of 11 July 1995, a transition period started in which matters in Potocari were being completed. An important part of the completion was the aid to and the evacuation of the refugees. Although, as stated by Van Baal during his preliminary witness examination (court record p. 2), at that moment Dutchbat was not being withdrawn from UNPF yet, there could not be any doubt about the fact that this would certainly take place after the evacuation. Nowhere is it suggested in the documents that Dutchbat would have any role to fulfil within UNPF after the evacuation. The distinction made by the District Court between the right invested in the Netherlands to withdraw Dutchbat from Bosnia and Herzegovina and the right of the UN to decide about the evacuation of the UNPROFOR units from Srebrenica is formally correct, but does not do enough justice to the fact that the one formed an integral part of the other.

5.18 An important part of Dutchbat's remaining task after 11 July 1995 consisted of the aid to and the evacuation of the refugees. During this transition period, besides the UN, the Dutch Government in The Hague had control over Dutchbat as well, because this concerned the preparations for a total withdrawal of Dutchbat from Bosnia and Herzegovina. In this respect Nicolai fulfilled a double role because he acted on behalf of the UN and also on behalf of the Dutch Government. The fact that The Netherlands had control over Dutchbat was not only theoretical, this control was also exercised in practice: the Government in The Hague, represented by two of its highest military officers, Van den Breemen and Van Baal, together with Janvier took the decision for the evacuation of Dutchbat and of the refugees, Minister Voorhoeve gave the instruction that Dutchbat was not allowed to cooperate in a separate treatment of the men, and he told Karremans that he had to save as much as possible. Through the intermediary of Nicolai in his double role, the Dutch Government also gave orders to Karremans regarding the evacuation (see 5.16 above). According to the judgment of the Court, in all these cases it was a matter of orders being given and not just transmitting the wishes or expressing the concerns, which Nicolai understood very well ("if the Dutch Government says something like that, as a military officer you just carry it out"). Nicolai sent the order by fax on 13 July 1995 to the Crisis Control Centre at the Ministry of Defense (DCBC) [Defensie Crisisbeheersingscentrum] in The Hague to find out whether the Dutch Government could live with this (see 5.13 above). Karremans also held the view that he was now (jointly) under command of the Dutch Government and acted accordingly (see 5.16 above). In the opinion of the Court it is beyond doubt that the Dutch Government was closely involved in the evacuation and the preparations thereof, and that it would have had the power to prevent the alleged conduct if it had been aware of this conduct at the time. The facts do not leave room for any other conclusion than that, in case the Dutch Government would have given the instruction to Dutchbat not to allow Mustafić to leave the compound or to take him along respectively, such an instruction would have been executed. Moreover, in this respect it is important that, as will appear below, the alleged conduct was contrary to the instruction given by General Gobillard to protect the refugees as much as possible, and that the State held it in its power to take disciplinary actions against that conduct.

5.19 The allegations brought against the conduct of Dutchbat by Mustafić et al. are directly related to the Dutch Government's decisions and instructions. The allegation that Dutchbat sent Mustafić away from the compound is related to the manner in which the evacuation of the refugees was carried out. The allegation that Dutchbat failed to take action when Mustafić was separated from his wife and children is related to the way in which the instruction given by Minister Voorhoeve to prevent a separate treatment of the men, was carried out. The latter also applies to the allegation that Dutchbat did not report immediately about the separation of the men and women and the other human rights violations that were observed.

5.20 The Court concludes therefore that the State possessed "effective control" over the alleged conduct of Dutchbat that is the subject of Mustafić et al.'s claim and that this conduct can be attributed to the State. In so far, grounds 3–9 and 11–13 have been put forward successfully.

Assessment of the substance of the allegations

6.1 The Court will now proceed to discuss the question whether the allegations made by Mustafić et al. hold ground. After increase of the claim on appeal, the following allegations are involved:

(i) The State sent Mustafić away from the compound;

(ii) The State failed to take action when Mustafić was separated from his wife and children which took place before the eyes of the Dutch battalion;

(iii) The State did not report the separation between the men and women and the other violations of human rights that it observed and that were a harbinger for genocide;

(iv) The State failed to institute criminal proceedings regarding the conduct of the Dutch military officers that sent Mustafić away from the compound;

(v) By replacing mr. Punt, the State violated Mustafić et al.'s right to a fair trial.

6.2 According to Mustafić et al. the State acted contrary to the following standards:

– Articles 154, 173, 157 and 182 Act on Obligations of Bosnia and Herzegovina;

– Articles 2, 3 and 8 ECHR and (as the Court understands: in particular) articles 6 and 7 of the ICCPR;

– Art. 1 Genocide Convention;

– Common article 1 of the Geneva Conventions;

– The specific instruction by General Gobillard to Dutchbat [to] "take all reasonable measures to protect refugees and civilians in your care";

– The Resolution of the Security Council that ordered Dutchbat "to deter by presence" (the Court assumes this refers to: Resolution 836) and Standing Operating Procedure 206 and 208.

6.3 The Court will first discuss allegation (i). In the first place the Court will test the alleged conduct of Dutchbat against the provisions of national Bosnian law. Apart from the State's opinion—which has been considered to be incorrect in the above—that the Court should judge Dutchbat's conduct strictly in accordance with international law, it is not disputed that based on Dutch international private law the alleged wrongful act must be tested against the law of Bosnia and Herzegovina. Additionally, the Court will test the alleged conduct against the legal principles contained in articles 2 and 3 ECHR and articles 6 and 7 ICCPR (the right to life and the prohibition of inhuman treatment respectively), because these principles, which belong to the most fundamental legal principles of civilized nations, need to be considered as rules of customary international law that have universal validity and by which the State is bound. The Court assumes that, by advancing the argument in its defense that these conventions are not applicable, the State did not mean to assert that it does not need to comply with the standards that are laid down in art. 2 and 3 ECHR and art. 6 and 7 ICCPR in peacekeeping missions like the present one.

6.4 In addition, as pleaded by Mustafić et al. and not challenged by the State, pursuant to art. 3 of the Constitution of Bosnia and Herzegovina, provisions from treaties to which the Republic of Bosnia and Herzegovina is a party have direct effect and constitute a part of the law of Bosnia and Herzegovina. Because the ICCPR was in force in any case in 1995, the articles 6 and 7 ICCPR constitute a part of Bosnian law that the Court must

apply in accordance with international private law and consequently these provisions have priority over the law of Bosnia and Herzegovina, in so far as this law were to deviate from the provisions of this treaty.

6.5 Allegation (i) implies that Dutchbat should not have sent Mustafić away from the compound. If Dutchbat had not done this, Mustafić would have been evacuated together with the Dutch battalion, according to Mustafić et al.

6.6 Mustafić was not employed by the UN nor by Dutchbat, but had been working for Dutchbat continuously. After the fall of the enclave of Srebrenica, Mustafić had sought refuge at the compound, together with his wife and children.

6.7 During the hearing of the Court of Appeal, when asked about this matter Mustafić et al. answered that Mustafić was still staying at the compound together with his wife and children after the other refugees had already left the compound, and the State did not deny this statement. So from this statement the Court concludes that Mustafić was still staying within the compound at the beginning of the evening. The kind of knowledge that Dutchbat had (in any case) at the beginning of that evening regarding the incidents that had taken place outside the camp has been established in the above under 2.27. Those incidents, especially when taken into consideration together, were alarming to such an extent that Karremans and Franken reasonably could not have drawn any other conclusion than that the able-bodied men that were going to leave the compound from that moment to be "evacuated" by the Bosnian Serbs, ran the real risk of being killed or at least of being subjected to inhuman treatment. In other words: at the latest, from that moment on, Dutchbat should have known that, at least concerning the able-bodied men, it was not (any longer) a matter of evacuation because they were deported in order to be killed or to suffer serious physical abuse. The fact that especially Major Franken was aware of this situation appears from his statements before the Parliamentary Inquiry Committee and the International Criminal Tribunal for the former Yugoslavia (ICTY), which show that he (although the situation regarding the "white house", i.e. the way in which the Bosnian Serbs treated the men became worse and he feared for the men) had consciously taken the decision to continue the evacuation for the purpose of not putting the women and children into danger (Examinations Parliamentary Inquiry Committee p. 76 and exhibit 52 p. 1056 sentences 1–7). In another examination before the ICTY, Franken testified that on the evening of the 12th:

> "He (Court: Ibro Nuhanović) asked me to stop the evacuation, because he feared everybody would be killed by the Serbs. I answered that I feared, in fact, for the men as well but that, in fact, he asked me to make the choice between thousands of women and children and the men. And then he answered that he understood what I meant, and he agreed and went away."
>
> (Exhibit 13 to summons p. 2021)

These statements can only mean that Franken was conscious of the fact that the men ran a real risk of being killed or of being subjected to inhuman treatment if they were to leave the compound.

6.8 The Court observes for that matter that although the UN and the Netherlands had decided to evacuate the refugees in the evening of 11 July 1995, whereby the UNHCR would take the lead, it is less evident whether Dutchbat at any moment received the instruction to cooperate in the evacuation by the Bosnian Serbs. Whatever the case may

be, the fact cannot be assumed that such an instruction would have implied that they also would have had to support the evacuation if the able-bodied men that were staying at the compound would therefore risk to be killed or to suffer inhuman treatment by the Bosnian Serbs. For that reason it would not be contrary to the instruction of the UN or the Dutch Government if Dutchbat had decided not later than the end of the afternoon of 13 July 1995 to no longer cooperate in the evacuation because of the above mentioned risks. This meant that Dutchbat, according to the standards of the law of Bosnia and Herzegovina and under the legal principles (with binding effect on the State) that are laid down in art. 6 and 7 ICCPR, did not have the right to send Mustafić away from the compound. According to those standards it is not allowed to surrender civilians to the armed forces if there is a real and predictable risk that the latter will kill or submit these civilians to inhuman treatment. By doing so, Dutchbat also acted contrary to the instruction given by General Gobillard "to take all reasonable measures to protect refugees and civilians in your care". For when it had become clear at the latest at the end of the afternoon on 13 July 1995 that the evacuation of the men was (had become) life-threatening, Dutchbat could no longer put up as a defense that it was obeying the instruction to support the evacuation. In comformity with the instruction issued by General Gobillard, from that moment on Dutchbat should have stopped its assistance to the evacuation as it was carried out by the Bosnian Serbs, in any case where it concerned the able-bodied men.

6.9 The judgment that Dutchbat did not have the right to send Mustafić away from the compound could only be different in case Mustafić was not sent away from the compound, as argued by the State but contested by Mustafić et al., or in case there was sufficient ground for justification for sending him away. The Court will now examine whether one of these cases presents itself.

6.10 The Court holds the opinion that the State accomplished that Mustafić left the compound against his will. Oosterveen testified that on 13 July 1995 he had a quick word with Mustafić and that Mustafić then said to him: "we stay here", from which Oosterveen understood that he wanted to stay with his family. According to his statement, Oosterveen then said: "that is not possible, everybody has to leave, with the exception of UN personnel." The Court believes that this remark by Oosterveen in the given context could not in all reasonableness be interpreted by Mustafić in any other way than as a signal to leave the compound. The State does not take the position that Mustafić could have stayed, on the contrary, the State asserts that Oosterveen did not make a mistake because Mustafić did not belong to the UN staff and did not possess a UN-pass. Under these circumstances, the consequences of the fact that Mustafić left the compound that same day must be borne by the State.

6.11 Furthermore, the State put forward in its defense that Mustafić et al. are wrong in isolating Mustafić's position from the other refugees in and outside the compound. The Court also rejects this defense. The Court does not need to give an opinion on the position of the refugees that were staying outside the compound or the other refugees inside the compound. The Court only needs to express its opinion on the position of Mustafić. The Court deems that Dutchbat should not have ensured that Mustafić left the compound at the beginning of that evening, because of the knowledge Dutchbat had gathered in the meantime about the risks that Mustafić would be exposed to upon leaving the compound. This conclusion is regarded apart from the question whether the same applies to the other refugees that had already left the compound earlier and the Court will not express any

opinion regarding that question. The time when Mustafić left the compound is different from the period within which the other refugees left the compound. Also the fact that Mustafić left the compound involuntarily could be different from the other refugees. The Court will not pronounce its opinion on that either. Mustafić, together with his family, was still staying at the compound after the other refugees (possibly with the exception of the Nuhanović family) had already left. Therefore, Dutchbat had the possibility at that time to make an individual assessment of Mustafić's situation and to consider whether, in spite of the earlier notification by Oosterveen, he should be allowed to stay at the compound after all. Considering the serious consequences—apparent to Dutchbat—that were ahead of Mustafić if he were to leave the compound and in view of the apparent wish expressed by Mustafić earlier that day to be allowed to stay at the compound ("we stay here"), Dutchbat should have reconsidered that decision according to the current situation at that time.

6.12 The above also implies that it is not relevant for this case whether Dutchbat could have allowed all the other refugees that had sought shelter at the compound to stay there, in relation to the food, water and other facilities available. The only thing that matters is whether Dutchbat had enough supplies and facilities to let Mustafić stay at the compound. The Court believes this to be plausible beyond any doubt and the State has not denied this fact either. The State's defense that the Bosnian Serb Army checked everything and that the departure of the refugees had become inevitable due to the attitude of the Bosnian Serbs fails in the case of Mustafić; there is nothing to show that the Serbs forced Dutchbat to send Mustafić away from the compound.

6.13 The State's defense that the evacuation could not be stopped because of the great risk for women and children does not succeed either. At the time when Mustafić left the compound, the women and children had already left the compound. The fact that the women and children would have run a risk if Mustafić had been allowed to stay at the compound has not been substantiated in any way and the Court does not consider that to be plausible anyway.

6.14 The Court concludes that the State acted wrongfully towards Mustafić by ensuring that he left the compound against his will. The Court also believes that Mustafić would still be alive (except for special circumstances that are not under discussion) if the State had not acted wrongfully towards him. Although the State disputes that Dutchbat had the obligation to take Mustafić along to a safe area, in establishing the causal relationship it is not relevant—also under Bosnian law—whether the State had the obligation to take him to a safe area, but to find out what would have happened if the State had not acted wrongfully. In this respect, Mustafić et al. have argued that if Mustafić had not been forced to leave the compound, he would still be alive today, which they further substantiated by pointing out that everybody who was still alive and well at the compound on the evening of 13 July has arrived in Tuzla alive. In that respect Nuhanović [translation note: for "Nuhanović" read "Mustafić"] also asserted that the agreement between General Smith and Mladić came down to the decision that all persons that were present at the compound were allowed to leave with Dutchbat. Finally, Mustafić et al. have pointed out that the departing Dutchbat convoy was never submitted to any inspections whatsoever. The State has not contested all of this and has not put forward in particular that Mustafić would have been left behind in Potocari. So with the above, the causal relationship between the compulsory departure of Mustafić from the compound and his death has been demonstrated.

6.15 Although the above can independently support Mustafić et al.'s claim under I, nevertheless the Court will address the State's defense that Dutchbat did not have the obligation to take Mustafić along to a safe area. Briefly summarized, what this defense boils down to is that Mustafić was not employed by the UN, that he was not in the possession of a UN-pass while only persons who had a UN-pass were allowed to be evacuated together with Dutchbat, that the Serbs knew exactly who was working for Dutchbat, that Dutchbat took into account and, considering the experiences of the past, had reasons to take into account that the Bosnian Serbs would closely inspect the departing convoy and that the taking along of persons without or with a false UN-pass would imply enormous risks for the remaining participants in the convoy. On the other hand, briefly summarized, Mustafić et al. have objected to this by stating that a UN-pass was not necessary, that in addition a UN-pass could be made at the compound, that there was room left on the "list of 29" because that list had slightly "thinned out" and, finally, that it has not been substantiated that taking Mustafić along would involve such large risks, especially risks to other persons than Mustafić personally, which would have given Dutchbat the right to refrain from taking him along.

6.16 The Court holds the opinion that it has not been demonstrated sufficiently that the possession of a UN-pass was a requirement that had been demanded by the Bosnian Serbs. Karremans and Mladić had agreed that the local personnel was allowed to leave with Dutchbat. It has not become apparent that during the consultations the possession of a UN-pass had been set as a condition for departure together with Dutchbat. Karremans himself did not state anything about that, he only stated that it was logical that this would be necessary (court record of preliminary witness examination p. 10) and that the possession of a UN-pass clearly had been an issue during the meetings with the representatives of Mladić. However, the Court cannot conclude from this that having a UN-pass had been explicitly or implicitly been stipulated as a condition by the Bosnian Serbs. Furthermore, the Court attaches importance to the fact that the agreement between General Smith and Mladić of 19 July 1995, two days before Dutchbat left the compound, refers to "up to thirty locally-employed personnel", but that this agreement does not mention the requirement of the UN-pass, whereas that would have been logical if the possession of a UN-pass really was a condition stipulated by Mladić. Franken's statement shows that the possession of a UN-pass was not necessary. For Franken has tesitified that Mladić had granted permission for the people employed by the Opština, who were not employed by the UN, to leave with Dutchbat and that on the list that was drawn up subsequently appeared both local personnel employed by the Opština and persons with UN-passes, as far as still present (court record of preliminary witness examination p. 7–8).

6.17 In addition, the Court takes the position that it would have been possible to make a UN-pass for Mustafić at the compound. Mustafić et al. have substantiated this argument, among other matters, by referring to the statements of Oosterveen and Karremans (court record of preliminary witness examination Oosterveen p. 6 and Karremans p. 10), whereas the State has only indicated that it is not sure whether this was indeed possible, because the statements that have been rendered about this issue are contradictory. The State has not put forward a reasoned defense against the argument of Mustafić et al. and therefore this assertion has been established as a fact between the parties. For that matter, the Court deems that the correctness of this assertion is proven conclusively by the quoted statement of Oosterveen because, as appears from his statement, he had personal

experience in producing UN-passes at the compound. The latter is not true of to the other witnesses who gave evidence about this subject.

6.18 In conclusion, the Court believes that, considering the great interests of Mustafić that were at stake, the possible risks that were related to taking Mustafić along with or without a UN-pass in reasonableness should not have resulted in the decision not to take him along. The Court admits that Dutchbat, given the earlier experiences, had to take into account that the convoy that would leave the compound would be thoroughly inspected by the Serbs. The Court also accepts that taking Mustafić along, who was not employed by the UN, would have implied a certain risk, but that this risk could have been reduced by making a UN-pass for him and by placing him on the list of local personnel, in so far as he did not appear on that list already. The State has not disputed the assertion that there was enough room on that list because it had "thinned out". In addition, the Court takes into consideration that Mustafić had been working for Dutchbat for quite some time, which could have been used as an argument towards the Bosnian Serbs to justify his place on the list of locally-employed personnel. Moreover, the defense failed to demonstrate sufficiently that Dutchbat, in all reasonableness, had to take into account any other risk than the one which implied that Mustafić, if checked by the Bosnian Serbs, would have been stopped and killed after all. The State has not brought forward any incidents from the past which reasonably could lead to the conclusion that in case of an inspection, not only the persons against which the Bosnian Serbs objected but also the other participants in the convoy would be in danger. The incident mentioned by the State, when a Bosnian Minister had been taken out of a convoy and had been executed, rather points out the contrary. The State quoted from a statement made by Major De Haan, who thought it would be conceivable that, on the occasion of an inspection by the Serbs, personnel (including Dutchbat) would be pulled from the buses and shot summarily. Apart from the fact that it is not clear whether the State adopts De Haan's view, matters that are conceivable do not, in reasonableness, have to be taken into account. Furthermore, it has not become apparent whether De Haan's statement, about matters being conceivable, was actually based on facts.

6.19 The State also brought forward that based on standing orders Dutchbat was not allowed to take along other civilians than those who were personnel members of the UN. The Court disregards this defense because it believes that the specific order by General Gobillard to protect the refugees as much as possible had priority over the standing order referred to by the State.

6.20 The Court concludes that the State, by ensuring that Mustafić left the compound and by not taking him along to a safe area, which resulted in the death of Mustafić, acted wrongfully towards Mustafić et al., under the provisions of art. 154 Act on Obligations of Bosnia and Herzegovina as well as based on a violation of the right to life and the prohibition on inhuman treatment. Pursuant to art. 171 paragraph 1 Act on Obligations of Bosnia and Herzegovina, the State is liable for the conduct of the Dutchbat members, who were employed by the State and who caused the damage "in the course of their work or in connection with work" (from the translation of exhibit 62 to the summons). The opinion of the State that liability would only exist if Dutchbat were under "direct control" of the State is not correct. This is not supported by the text of art. 171 and has not been substantiated by the State either. The liability of the State also results from the principle of "effective control", as considered in the above. Pursuant to art. 155 Act on Obligations of Bosnia and

Herzegovina, the State is liable for immaterial damage which Mustafić et al. have suffered consequently and will possibly yet suffer.

6.21 The above means that the claim under I in that sense will be allowed and that the Court in its final judgment will rule that on account of the wrongful act the State is liable for damages that Mustafić et al. have suffered and will yet suffer as a result from the death of Mustafić.

6.22 Since the claim under I has been declared allowable based on the allegations and grounds as discussed in the above, the Court will not need to address the allegations (ii) and (iii). The other standards which Mustafić et al. relied upon, including the Genocide Convention referred to in ground for appeal 10, will not need to be discussed either. After all, Mustafić et al. did not base a separate claim on these allegations and infractions of legal standards.

6.23 However, the Court will address allegations (iv) and (v), because Mustafić et al. do claim separate rulings on these.

The allegation that the State failed to institute criminal proceedings

7.1 Mustafić et al. reproach the State that it failed to institute criminal proceedings regarding the conduct of the Dutch troops that sent Mustafić away from the compound (ground 14). They demand the Court to rule that the State violated the Genocide Convention, the ECHR and ICCPR by not starting a criminal investigation into the violations of these conventions committed by the Dutch troops. From the explanation of that ground for appeal, the Court understands that Mustafić et al.'s ground is about the conduct of Oosterveen and other military officers, which they qualify as assisting to genocide.

7.2 Mustafić et al. lodged a complaint with the public prosecutor against [X], [Y] and [Z] in July 2010. Subsequently, the Public Prosecution Service started an inquiry into the facts, which inquiry had not yet been concluded at the time of the oral pleadings before this Court. The Court understands that the allegation of Mustafić et al. now is that during 15 years the State failed to start such an inquiry. Mustafić et al. assert that because of this negligence they suffered immaterial damages.

7.3 The Court judges as follows. The inquiry that Mustafić et al. desire is presently taking place. Therefore they no longer have an interest in a ruling on that issue.

7.4 The State rightfully pointed out that if the Public Prosecution Service, after concluding their inquiry, decides to refrain from prosecution, Mustafić et al. have the right to lodge a complaint pursuant to art. 12 Code of Criminal Procedure (Sv.). The argument that the Public Prosecution Service and therefore the State acted unlawfully by failing to institute proceedings during 15 years, cannot be judged in the present case without dealing with questions such as the possible punishability of the alleged conduct of the Dutch troops brought forward by Mustafić et al., which questions are closely related to matters that are to be adjudicated in a complaints procedure under art. 12 Sv. and that are the exclusive prerogative of the criminal court judge. If the Court would permit itself to judge these questions, it would inadmissibly be prejudging a complaints procedure under art. 12 Sv.

7.5 The conclusion is that ground 14 fails and that the claim based on that ground for appeal will be dismissed.

[. . .]

This ruling was passed by Justices mr. A. Dupain, mr. S.A. Boele and mr. G. Dulek-Schermers and delivered at the public hearing of 5 July 2011, in the presence of the Clerk of the Court.

B. The Republic of the Philippines

1. Decision of the Supreme Court of the Philippines: Bayan Muna, as represented by Rep Satur Ocampo, et al., Petitioners, v. Alberto G. Romulo in his capacity as Executive Secretary and Blas F. Ople, in his capacity as Secretary of Foreign Affairs, Respondents, GR No. 159618

(1 February 2011)

Non-surrender bilateral agreement—Exchange of diplomatic notes can constitute a legally binding agreement under international law—Rome Statute of the International Criminal Court—Signatories only obliged to refrain from defeating object and purpose of Rome Statute—Doctrine of incorporation—Abuse of discretion

Summary

In 2003, the Department of Foreign Affairs (DFA) Secretary accepted the terms of a non-surrender bilateral agreement between the United States and the Republic of the Philippines (RP-US Non Surrender Agreement) through an exchange of diplomatic notes with the United States Ambassador at that time. The Agreement provided that no persons of one Party, in the territory of the other, shall be surrendered or transferred by any means to any international tribunal for any purpose, unless such tribunal has been established by the UN Security Council. *In esse,* the Agreement aimed to protect what it referred to and defined as "persons" of the Republic of the Philippines and the United States from frivolous and harassment suits that might be brought against them in international tribunals. The petitioner imputed grave abuse of discretion to respondents in concluding and ratifying the Agreement and prayed that it be struck as unconstitutional, or at least declared as without force and effect.

The foregoing issues were summarized as follows: (i) whether or not the RP-US Non Surrender Agreement was contracted validly, which resolved itself into the question of whether or not the respondents gravely abused their discretion in concluding it; and (ii) whether or not the RP-US Non Surrender Agreement, which was not submitted to the Senate for concurrence, contravened and undermined the Rome Statute of the International Criminal Court (ICC) and other treaties.

The petitioner's initial challenge against the Agreement related to form, its threshold posture being that Exchange of Notes [. . .] cannot be a valid medium for concluding the Agreement. Petitioner's contention—perhaps taken unaware of certain well-recognized international doctrines, practices and jargons—was untenable. One of these was the doctrine of incorporation, as expressed in Section 2, Article II of the Constitution, wherein the Philippines adopted the generally accepted principles of international law and international jurisprudence as part of the law of the land and adhered to the policy of peace,

cooperation, and amity with all nations. An exchange of notes falls "into the category of inter-governmental agreements", which is an internationally acceptable form of international agreement. International agreements may be in the form of (1) treaties that require legislative concurrence after the executive ratification; or (2) executive agreements that are similar to treaties, except that they do not require legislative concurrence and are usually less formal ad [sic] deal with a narrower range of subject matters than treaties. In thus agreeing to conclude the Agreement through the exchange of notes, the then President, represented by the DFA Secretary, acted within the scope of authority and discretion vested in her by the Constitution.

The respondents also raised some issues concerning whether the President and the DFA Secretary gravely abused their discretion amounting to lack or excess of jurisdiction for concluding the Agreement by means of exchange of notes dated 13 May 2003 when the Philippines had already signed the Rome Statute of the ICC although this was pending ratification by the Philippine Senate. A question was also raised whether the Agreement constituted an act which defeated the object and purpose of the Rome Statue of the ICC and contravened the obligation of good faith inherent in the signature of the President affixed on the Rome Statue of the ICC, and if so whether the Agreement was void and unenforceable on the ground.

The Supreme Court ruled that the Non-Surrender Agreement did not defeat the object and purpose of the Rome Statute which was to ensure that those responsible for the worst possible crimes were brought to justice in all cases, primarily by states, and as a last resort, by the ICC. Far from going against each other, one complemented the other; Article 1 of the Rome Statute pertinently provided that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes". The provision indicated that primary jurisdiction over the so-called international crimes rested, at the first instance, with the State where the crime was committed; and secondarily, with the ICC in appropriate situations contemplated under Art. 17, para 1 of the Rome Statute. The Court found that nothing in the provisions of the Agreement, in relation to the Rome Statute, tended to diminish the efficacy of the Statute, let alone defeat the purpose of the ICC. Furthermore, the Court stressed that the Philippines was only a signatory to the Rome Statute and not a State party. Thus, it was only obliged to refrain from acts which would defeat the object and purpose of the Rome Statute as the articles were not considered legally binding on signatories.

The Supreme Court of the Republic of the Philippines upheld the validity of the RP-US Non Surrender Agreement.

2. *Decision of the Supreme Court of the Philippines: Prof. Merlin Magallona, et al., Petitioners, v. Eduardo Ermita, et. al., Respondents, GR No. 187167*

(16 July 2011)

United Nations Convention on the Law of the Sea (UNCLOS III)— Interpretation of "regime of islands"—UNCLOS III plays no role in territorial claims—Determining maritime zones—Norms regulating the conduct of States in the world's oceans and submarine areas—Treaty of Paris—Delineating of Archipelagic baselines and internal waters —*Locus Standi* — Sovereignty

Summary

The original action for writs of certiorari and prohibition in this case assailed the constitutionality of Republic Act No. 9522 (R.A. 9522), adjusting the country's archipelagic baselines and classifying the baseline regime of nearby territories.

Among others, the United Nations Convention on the Law of the Sea (UNCLOS III), which the Philippines ratified on February 27, 1994, prescribes the water-land ratio, length, and contour of baselines of archipelagic states like the Philippines and sets the deadline for the filing of applications for the extended continental shelf. Complying with these requirement [sic], R.A. 9522 shortened one baseline, optimized the location of some basepoints around the Philippine archipelago, and classified adjacent territories namely, the Kalayaan Island Group (KIG) and the Scarborough Shoal, as "regimes of islands" whose islands generate their own applicable zones.

The Court gave short shift [sic] to petitioners' contention that R.A. 9522 "dismembers a large portion of the national territory" for allegedly not following the pre-UNCLOS III demarcation of Philippine territory under the Treaty of Paris and related treaties and defined under the 1935, 1973 and 1987 Constitutions. It explained that UNCLOS III and its ancillary baselines laws played no role in the acquisition, enlargement or diminution of territory.

> "Under traditional international law typology, States acquire (or conversely, lose) territory through occupation, accretion, cession and prescription, not by exhausting multilateral treaties on the regulations of sea-use rights or enacting statues to comply with the treaty's terms to delimit maritime zones and continental shelves. Territorial claims to land features are outside UNCLOS III, and are instead governed by the rules on general international law".

It noted that baselines laws such as R.A. 9522 were enacted by UNCLOS III States parties to mark specific basepoints along their coasts from which baselines are drawn, either straight or contoured, to serve as geographic starting points to measure the breadth of the maritime zones and continental shelf. It found that R.A. 9522, by optimizing the location of basepoints, even increased the Philippines' total maritime space (covering its internal waters, territorial sea and exclusive economic zone) by 145,216 square nautical miles.

Contrary to petitioners' claims, the Court also held that R.A. 9522's use of regime of islands framework of UNCLOS III to draw the baselines was not inconsistent with the Philippines' claim of sovereignty over the KIG and Scaborough [sic] Shoal. It pointed out that Section 2 of the law commits to text the Philippines' continued claim of sovereignty and jurisdiction over the KIG and Scarborough Shoal.

> "Far from surrendering the Philippines' claim over the KIG and Scarborough Shoal, Congress' decision to classify the KIG and the Scarborough Shoal as "'Regime(s) of Islands' under the Republic of the Philippines consistent with Article 121" of UNCLOS III manifests the Philippine State's responsible observance of its *pacta sunt servanda* obligation under UNCLOS III."

Under Article 121 of UNCLOS III, any "naturally formed area of land, surrounded by water, which is above water at high tide" such as positions of the KIG, qualified under the category of "regime of islands" whose islands generate their own applicable maritime zones.

The Court upheld the constitutionality of R.A No. 9552 [sic] demarcating the maritime baselines of the Philippines as an archipelagic state in compliance with UNICLOS III. In an unanimous En Banc decision penned by Justice Antonio T. Carpio, the Court stressed that R.A. 9552's [sic] enactment "allows an internationally-recognized delimitation of the breadth of the Philippines' maritime zones and continental shelf (and is) therefore a most vital step on the part of the Philippines safeguarding its maritime zones, consistent with the Constitution and our national interest." The case is awaiting entry of judgment after the Court denied with finality the petitioners' motion for reconsideration of the decision.

Part Four

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The United Nations System

UN Principal Organs

- General Assembly
- Security Council
- Economic and Social Council
- Secretariat
- International Court of Justice
- Trusteeship Council [5]

Subsidiary Bodies

- Main and other sessional committees
- Disarmament Commission
- Human Rights Council
- International Law Commission
- Standing committees and ad hoc bodies

Programmes and Funds

UNCTAD United Nations Conference on Trade and Development

- **ITC** International Trade Centre (UNCTAD/WTO)

UNDP United Nations Development Programme

- **UNCDF** United Nations Capital Development Fund
- UNV United Nations Volunteers

UNEP United Nations Environment Programme

UNFPA United Nations Population Fund

Subsidiary Bodies

- Counter-terrorism committees
- International Criminal Tribunal for Rwanda (ICTR)
- International Criminal Tribunal for the former Yugoslavia (ICTY)
- Military Staff Committee
- Peacekeeping operations and political missions
- Sanctions committees (ad hoc)
- Standing committees and ad hoc bodies

Functional Commissions

- Crime Prevention and Criminal Justice
- Narcotic Drugs
- Population and Development
- Science and Technology for Development
- Social Development
- Statistics
- Status of Women
- Sustainable Development
- United Nations Forum on Forests

Other Bodies

- Committee for Development Policy
- Committee of Experts on Public Administration
- Committee on Non-Governmental Organizations
- Permanent Forum on Indigenous Issues
- United Nations Group of Experts on Geographical Names
- Other sessional and standing committees and expert, ad hoc and related bodies

Departments and Offices

EOSG Executive Office of the Secretary-General

DESA Department of Economic and Social Affairs

DFS Department of Field Support

DGACM Department for General Assembly and Conference Management

DM Department of Management

DPA Department of Political Affairs

DPI Department of Public Information

DPKO Department of Peacekeeping Operations

DSS Department of Safety and Security

OCHA Office for the Coordination of Humanitarian Affairs

NOTES:

1 UNRWA and UNIDIR report only to the General Assembly.

2 IAEA reports to the Security Council and the General Assembly.

3 WTO has no reporting obligation to the General Assembly (GA) but contributes on an ad-hoc basis to GA and ECOSOC work inter alia on finance and developmental issues.

4 Specialized agencies are autonomous organizations working with the UN and each other through the coordinating machinery of ECOSOC at the intergovernmental level, and through the Chief Executives Board for Coordination (CEB) at the inter-secretariat level. This section is listed in order of establishment of these organizations as specialized agencies of the United Nations.

5 The Trusteeship Council suspended operation on 1 November 1994 with the independence of Palau, the last remaining United Nations Trust Territory, on 1 October 1994.

UN-HABITAT United Nations Human Settlements Programme

UNHCR Office of the United Nations High Commissioner for Refugees

UNICEF United Nations Children's Fund

UNODC United Nations Office on Drugs and Crime

UNRWA[1] United Nations Relief and Works Agency for Palestine Refugees in the Near East

UN-Women United Nations Entity for Gender Equality and the Empowerment of Women

WFP World Food Programme

Research and Training Institutes

UNICRI United Nations Interregional Crime and Justice Research Institute

UNIDIR[1] United Nations Institute for Disarmament Research

UNITAR United Nations Institute for Training and Research

UNRISD United Nations Research Institute for Social Development

UNSSC United Nations System Staff College

UNU United Nations University

Other Entities

UNAIDS Joint United Nations Programme on HIV/AIDS

UNISDR United Nations International Strategy for Disaster Reduction

UNOPS United Nations Office for Project Services

Related Organizations

CTBTO PrepCom Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization

IAEA[2] International Atomic Energy Agency

OPCW Organisation for the Prohibition of Chemical Weapons

WTO[3] World Trade Organization

Advisory Subsidiary Body

UN Peacebuilding Commission

Regional Commissions

ECA Economic Commission for Africa

ECE Economic Commission for Europe

ECLAC Economic Commission for Latin America and the Caribbean

ESCAP Economic and Social Commission for Asia and the Pacific

ESCWA Economic and Social Commission for Western Asia

Specialized Agencies[4]

ILO International Labour Organization

FAO Food and Agriculture Organization of the United Nations

UNESCO United Nations Educational, Scientific and Cultural Organization

WHO World Health Organization

World Bank Group

- **IBRD** International Bank for Reconstruction and Development
- **IDA** International Development Association
- **IFC** International Finance Corporation
- **MIGA** Multilateral Investment Guarantee Agency
- **ICSID** International Centre for Settlement of Investment Disputes

IMF International Monetary Fund

ICAO International Civil Aviation Organization

IMO International Maritime Organization

ITU International Telecommunication Union

UPU Universal Postal Union

WMO World Meteorological Organization

WIPO World Intellectual Property Organization

IFAD International Fund for Agricultural Development

UNIDO United Nations Industrial Development Organization

UNWTO World Tourism Organization

OHCHR Office of the United Nations High Commissioner for Human Rights

OIOS Office of Internal Oversight Services

OLA Office of Legal Affairs

OSAA Office of the Special Adviser on Africa

OSRSG/CAAC Office of the Special Representative of the Secretary-General for Children and Armed Conflict

UNODA Office for Disarmament Affairs

UNOG United Nations Office at Geneva

UN-OHRLLS Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States

UNON United Nations Office at Nairobi

UNOV United Nations Office at Vienna

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