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

Chapters I and II contain selected 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 contains selected 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 the treaties and their entry into force.

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 2016.

Chapter VIII contains decisions given in 2016 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.

Several documents published in the *Juridical Yearbook* were supplied by the organizations or Governments concerned at the request of the Secretariat. Treaty provisions, legislative texts and judicial decisions may have been subject to minor editing by the Secretariat.

This volume will appear on the United Nations Juridical Yearbook's website at http://legal.un.org/unjuridicalyearbook/.

ABBREVIATIONS

ABCC	Advisory Board on Compensation Claims (United Nations)
AMISOM	African Union Mission in Somalia
AU	African Union
AU-RTF	African Union-Regional Task Force
BNUB	United Nations Office in Burundi
CCLM	Committee on Constitutional and Legal Matters (FAO)
CLCS	Commission on the Limits of the Continental Shelf
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization
CTC	Counter-Terrorism Committee (Security Council)
CTED	Counter-Terrorism Committee Executive Directorate (United Nations)
CTITF	Counter-Terrorism Implementation Task Force
DPKO	Department of Peacekeeping Operations (United Nations)
DPI	Department of Public Information (United Nations)
EBRD	European Bank for Reconstruction and Development
ECOWAS	Economic Community of West African States
EU	European Union
EUFOR RCA	European Union Force in the Central African Republic
EUFOR ALTHEA	European Union Force ALTHEA
EUMAM RCA	European Union Military Advisory Mission in the Central African Republic
FAO	Food and Agriculture Organization of the United Nations
HLTF	United Nations System High-Level Task Force on Global Food Security
IADC	Inter-Agency Space Debris Coordination Committee
IAEA	International Atomic Energy Agency
IANSA	International Action Network on Small Arms
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IFAD	International Fund for Agricultural Development
IGAD	Intergovernmental Authority on Development
IGO	Intergovernmental organization

ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
ISO	International Organisation for Standardization
ITLOS	International Tribunal for the Law of the Sea
ITU	International Telecommunication Union
IUCN	International Union for Conservation of Nature
JBVMM	Joint Border Verification and Monitoring Mechanism (UNISFA)
JCPOA	Joint Comprehensive Plan of Action
MEU	Management Evaluation Unit (United Nations)
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in Central African Republic
MINUSTAH	United Nations Stabilisation Mission in Haiti
MISCA	African-led International Support Mission in the Central African Republic
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organization
OCHA	Office for the Coordination of Humanitarian Affairs
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
OPCW-JIM	Organization for the Prohibition of Chemical Weapons – United Nations Joint Investigative Mechanism
OSLA	Office of Staff Legal Assistance (United Nations)
UNAKRT	United Nations Assistance to the Khmer Rouge Trials
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
UNDOF	United Nations Disengagement Observer Force
UNDP	United Nations Development Programme
UNDT	United Nations Dispute Tribunal
UNECA	United Nations Economic Commission for Africa
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCC	United Nations Framework Convention on Climate Change
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNFPA	United Nations Population Fund
UN Habitat	United Nations Human Settlements Programme
UNHAS	United Nations Humanitarian Air Service
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNIDROIT	International Institute for the Unification of Private Law
UNIFIL	United Nations Interim Force in Lebanon
UNIOGBIS	United Nations Integrated Peacebuilding Office in Guinea-Bissau
UNISFA	United Nations Interim Security Force for Abyei
UNISS	United Nations Integrated Strategy for the Sahel
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
UNLP	United Nations Laissez-Passer
UNMAS	United Nations Mine Action Service
UNMEER	United Nations Mission for Ebola Emergency Response
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMISS	United Nations Mission in the Republic of South Sudan
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNOAU	United Nations Office to the African Union
UNOCA	United Nations Regional Office for Central Africa

UNOCI	United Nations Operation in Côte d'Ivoire
UNODC	United Nations Office on Drugs and Crime
UNON	United Nations Office at Nairobi
UNOWA	United Nations Office for West Africa
UNOWAS	United Nations Office for West Africa and Sahel
UNRCCA	United Nations Regional Centre for Preventive Diplomacy for Central Asia
UNRCPD	United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific
UNREC	United Nations Regional Centre for Peace and Disarmament in Africa
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSAC	United Nations Standing Advisory Committee on Security Questions in Central Africa
UNSCO	United Nations Special Coordinator for the Middle East Peace Process
UNSCOL	United Nations Special Coordinator for Lebanon
UNSMIL	United Nations Support Mission in Libya
UNSOA	United Nations Support Office for AMISOM
UNSOM	United Nations Assistance Mission in Somalia
UNSOS	United Nations Support Office in Somalia
UNSU	United Nations Staff Union
UNTSO	United Nations Truce Supervision Organization
UNU	United Nations University
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
WMO	World Meteorological Organization
WFP	World Food Programme
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

Ecuador

Decision No. 000082
(Entry of citizens subject to the special regime who will be participating in the United Nations Conference on Housing and Sustainable Urban Development, Habitat III)

The Minister for Foreign Affairs and Human Mobility

Whereas:

[…]

On 25 September 2015, the Framework Agreement between the United Nations and the Republic of Ecuador on Provisions regarding Privileges and Immunities and Certain Other Matters relating to United Nations Meetings in Ecuador was signed in New York City,

Article IV, paragraph 1, of the Framework Agreement, stipulates: "1. All participants and persons performing functions in connection with a Meeting held in Ecuador shall have the right to enter and leave Ecuador without hindrance. If necessary, visas and entry permits will be granted free of charge and as quickly 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. When applications are made less than four weeks before the opening of the Meeting, visas shall be granted as quickly as possible and not later than three days before the opening of the Meeting. Arrangements will be made to ensure that visas for the duration of the Meeting are issued at the airport of arrival to those participants who were unable to obtain them earlier.",

Article IV, paragraph 2, of the Framework Agreement stipulates: "2. 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,", and,

The United Nations Conference on Housing and Sustainable Urban Development, Habitat III, will be held in the city of Quito, Ecuador, from 17 to 20 October 2016, and its main objective is to strengthen global political commitment to the sustainable development of towns, cities and other human settlements, both rural and urban; therefore, it is necessary to determine the class of visa to be granted to participants under the special regime,

In accordance with the powers conferred on him by article 154, paragraph 1, of the Constitution of the Republic of Ecuador and article 17 of the Statute of the Legal and Administrative Regime of the Executive Branch,

Decides as follows:

Article 1. To allow persons subject to the special regime who will participate in the United Nations Conference on Housing and Sustainable Urban Development, Habitat III to enter the country, and that they should be granted a 12X non-immigrant visa free of charge.

Article 2. To establish the procedure and requirements for the citizens of the countries subject to the special regime accredited to participate at the Habitat III Conference, as follows:

(*a*) Registration for the event on the United Nations website;

(*b*) Passport valid for at least 6 months;

(*c*) Return air tickets and travel itinerary;

(*d*) The visa process may be conducted in person or through the Virtual Consulate System of the Ministry of Foreign Affairs;

(*e*) The 12X visa will be valid for up to 20 days; and

(*f*) Holders of such visas may not change their immigration status on Ecuadorian territory.

Article 3. The Ecuadorian State reserves the right to prevent entry, to deny or cancel a visa, to those who do not meet the requirements established in this Ministerial Decision, in accordance with the provisions of article 5 of the Aliens Act and other laws in force.

Article 4. The Department of Human Mobility shall be responsible for the execution of this instrument.

[…]

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**

In 2016, no State acceded to the Convention. As at 31 December 2016, there were 162 States parties to the Convention.***

2. Agreements relating to missions, offices and meetings

(*a*) Agreement between the Kingdom of the Netherlands and the United Nations concerning the headquarters of the International Residual Mechanism for Criminal Tribunals. New York, 23 February 2015****

Whereas the Security Council of the United Nations acting under Chapter VII of the Charter of the United Nations decided by its resolution 1966 (2010) adopted on 22 December 2010 to establish the International Residual Mechanism for Criminal Tribunals with two branches, one for the International Criminal Tribunal for Rwanda (1CTR) and the other for the International Tribunal for the former Yugoslavia (ICTY);

Whereas the International Residual Mechanism for Criminal Tribunals is established as a subsidiary organ within the terms of Article 29 of the Charter of the United Nations;

Whereas article 3 of the Statute of the International Residual Mechanism for Criminal Tribunals, Annex I to Security Council resolution 1966 (2010), provides that the branch for the ICTR shall have its seat in Arusha and the branch for the ICTY shall have its seat in The Hague;

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* In light of the large number of treaties concluded, only a selection of the relevant treaties is reproduced herein.

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

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

**** Entered into force on 1 September 2016, in accordance with article 48. United Nations registration no. I-53892.

Whereas the Security Council, by resolution 1966 (2010), decided that the determination of the seats of the branches of the Mechanism is subject to the conclusion of appropriate arrangements between the United Nations and the host countries of the branches of the Mechanism acceptable to the Security Council;

Whereas the United Nations and the Kingdom of the Netherlands wish to conclude an agreement to facilitate the smooth and efficient functioning of the International Residual Mechanism for Criminal Tribunals in the Kingdom of the Netherlands;

The United Nations and the Kingdom of the Netherlands have agreed as follows:

Part I. General provisions

Article 1. Use of terms

For the purpose of this Agreement:

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

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

(*c*) "defence counsel" means a person admitted as counsel by the Mechanism;

(*d*) "experts on mission for the Mechanism" means those persons, other than officials of the Mechanism, who perform missions for the Mechanism;

(*e*) "General Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which the Kingdom of the Netherlands acceded on 19 April 1948;

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

(*g*) "ICTR" means the International Criminal Tribunal for Rwanda, established by the Security Council pursuant to its resolution 955 (1994);

(*h*) "ICTY" means the International Tribunal for the former Yugoslavia, established by the Security Council pursuant to its resolutions 808 (1993) and 827 (1993);

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

(*j*) "judges" means the judges of the Mechanism elected or appointed in accordance with article 10 of the Statute;

(*k*) "Mechanism" means the International Residual Mechanism for Criminal Tribunals, established by the Security Council pursuant to its resolution 1966 (2010);

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

(*m*) "officials of the Mechanism" means the President, the judges, the Prosecutor, the Registrar and the staff of the Mechanism;

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

(*o*) "premises" means buildings, parts of buildings and areas, including installations and facilities made available to, maintained, occupied or used by the Mechanism in the

host State in consultation with the host State, in connection with its functions and purposes, including detention of a person;

(*p*) "President" means the President of the Mechanism appointed by the Secretary-General in accordance with article 11, paragraph 1, of the Statute;

(*q*) "Prosecutor" means the Prosecutor of the Mechanism appointed by the Security Council in accordance with article 14, paragraph 4, of the Statute;

(*r*) "Registrar" means the Registrar of the Mechanism appointed by the Secretary-General in accordance with article 15, paragraph 3, of the Statute;

(*s*) "Resolution 1966" means Security Council resolution 1966 (2010) adopted on 22 December 2010, which established the Mechanism;

(*t*) "Rules of Procedure and Evidence" means the Rules of Procedure and Evidence of the Mechanism adopted in accordance with article 13 of the Statute;

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

(*v*) "staff of the Mechanism" means the staff of the Registry as referred to in article 15, paragraph 4, of the Statute and the staff of the Office of the Prosecutor as referred to in article 14, paragraph 5, of the Statute;

(*w*) "Statute" means the Statute of the International Residual Mechanism for Criminal Tribunals, as annexed to Security Council resolution 1966 (2010);

(*x*) "Vienna Convention" means the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961, to which the Kingdom of the Netherlands acceded on 7 September 1984; and

(*y*) "witnesses" means persons designated as such by the Mechanism.

Article 2. Purpose and scope of this Agreement

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

Part II. Status of the Mechanism

Article 3. Juridical personality

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

(*a*) to contract;

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

(*c*) to institute legal proceedings.

2. For the purposes of this article, the Mechanism shall be represented by the Registrar.

Article 4. Privileges, immunities and facilities

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

2. The General Convention shall apply to the Mechanism and the archives of the Mechanism, the ICTY and the ICTR.

Article 5. Inviolability of the premises

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

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

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

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

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

Article 6. Protection of the premises and their vicinity

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

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

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

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

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

Article 7. Law and authority on the premises

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

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

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

4. The Mechanism may expel or exclude persons from the premises for violation of the applicable rules or regulations and shall promptly inform the competent authorities of such measures.

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

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

7. Any dispute between the Mechanism and the host State as to whether a rule or regulation of the Mechanism or the United Nations comes within the ambit of this article or as to whether a law or regulation of the host State is inconsistent with a rule or regulation of the United Nations or the Mechanism under this article shall promptly be settled by the procedure under article 44 of this Agreement. Pending such settlement, the rule or regulation that is the subject of the dispute shall apply and the law or regulation of the host State shall be inapplicable on the premises to the extent that the Mechanism claims it to be inconsistent with the rule or regulation in question.

Article 8. Public services for the premises

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

2. In cases where the services referred to in paragraph 1 of this article are made available to the Mechanism by the competent authorities, or where the prices thereof are

under their control, the rates for such services shall not exceed the lowest comparable rates accorded to essential agencies and organs of the host State.

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

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

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

Article 9. Flags, emblems and markings

The Mechanism shall be entitled to display its and the United Nations' flags, emblems and markings on its premises and on vehicles and other means of transportation used for official purposes.

Article 10. Funds, assets and other property

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

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

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

Article 11. Inviolability of archives, documents and materials

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

2. The termination or absence of such inviolability shall not affect protective measures that the Mechanism, the ICTY or the ICTR may have ordered or may order with regard to documents and materials made available to or used by the Mechanism.

Article 12. Facilities in respect of communications

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

2. No censorship shall be applied to the official communications or correspondence of the Mechanism. Such immunity from censorship shall extend to printed matter, photographic and electronic data communications and other forms of communication as may be used by the Mechanism.

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

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

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

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

Article 13. Freedom of financial assets from restrictions

1. Without being restricted by financial controls, regulations, notification requirements in respect of financial transactions, or moratoria of any kind, the Mechanism:

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

(*b*) shall be free to transfer its funds, gold or currency from one country to another, or within the host State; and

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

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

Article 14. Exemption from taxes and duties for the Mechanism and its property

1. Within the scope of its official functions, the Mechanism, its assets, income and other property shall be exempt from:

(*a*) all direct taxes, whether levied by national, provincial or local authorities, which include, *inter alia*, income tax and corporation tax;

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

(*c*) motor vehicle taxes (*motorrijtuigenbelasting*);

(*d*) taxes on passenger motor vehicles and motorcycles (*belasting van personenauto's en motorrijvielen*);

(*e*) value added taxes (*omzetbelasting*) paid on goods and services supplied on a recurring basis or involving considerable expenditure;

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

(*g*) real property transfer taxes (*overdrachtsbelasting*);

(*h*) insurance taxes (*assurantiebelasting*);

(*i*) energy taxes (*regulerende energiebelasting*);

(*j*) taxes on mains water (*belasting op leidingwater*); and

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

2. The exemptions provided for in paragraph 1, subparagraphs (*e*) through (*k*), of this article may be granted by way of a refund. These exemptions shall be applied in accordance with the formal requirements of the host State. These requirements, however, shall not affect the general principles laid down in paragraph 1 of this article.

3. Goods acquired or imported under the terms set out in paragraph 1 of this article shall not be sold, let out, given away or otherwise disposed of in the host State, except in accordance with conditions agreed upon with the host State.

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

Article 15. Exemption from import and export restrictions

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

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

Article 16. Privileges, immunities and facilities of the President, judges, the Prosecutor and the Registrar

1. The President, the Prosecutor and the Registrar, together with members of their family forming part of the household who are not nationals or permanent residents of the host State, shall enjoy the privileges, immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law, including the General Convention and the provisions of the Vienna Convention. Judges of the Mechanism, other than the

President, together with members of their family forming part of the household who are not nationals or permanent residents of the host State, shall enjoy these same privileges and immunities, exemptions and facilities when engaged on the business of the Mechanism. Such privileges, immunities, exemptions and facilities, *inter alia*, include:

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

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

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

(*d*) immunity from national service obligations;

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

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

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

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

(*i*) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State, and to re-export their furniture and effects free of duties and taxes to their country of destination upon separation from the Mechanism;

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

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

2. The President, the judges, the Prosecutor and the Registrar shall continue to be accorded immunity from legal process of every kind in respect of words which were spoken or written and all acts which were performed by them in their official capacity even after they have ceased to perform their functions for the Mechanism.

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

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

5. Without prejudice to paragraph 3 of this article, persons referred to in this article who are nationals or permanent residents of the host State shall enjoy only the privileges, immunities and facilities under article V, section 18 and article VII of the General Convention, together with the following modifications and supplementary provisions:

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

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

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

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

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

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

6. Persons referred to in paragraph 5 of this article shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Mechanism.

Article 17. Privileges, immunities and facilities of staff of the Mechanism

1. Staff of the Mechanism shall enjoy such privileges, immunities and facilities as are necessary for the independent performance of their functions. They shall enjoy privileges and immunities accorded to officials of the United Nations under articles V and VII of the General Convention, including as modified and supplemented below:

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

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

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

(*d*) immunity from national service obligations;

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

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

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

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

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

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

re-export their furniture and effects free of duties and taxes to their country of destination upon separation from the Mechanism.

2. Additionally, staff of the Mechanism of P-5 level and above, and such additional categories of staff of the Mechanism as may be designated in agreement with the host State by the Registrar, or an official designated by him or her, together with members of their family forming part of the household who are not nationals or permanent residents of the host State, shall be accorded the same privileges, immunities and facilities as the host State accords to diplomatic envoys of comparable rank of the diplomatic missions established in the host State in conformity with the Vienna Convention.

3. Additionally, staff of the Mechanism of P-4 level and below, including general service staff, together with members of their family forming part of the household who are not nationals or permanent residents of the host State, shall be accorded the same privileges, immunities and facilities as the host State accords to members of the administrative and technical staff of diplomatic missions established in the host State, in conformity with the Vienna Convention, provided that the immunity from criminal jurisdiction and personal inviolability shall not extend to acts performed outside the course of their official duties.

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

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

6. Without prejudice to paragraph 4 of this article, persons referred to in this article who are nationals or permanent residents of the host State shall enjoy only the privileges, immunities and facilities under article V, section 18, and article VII of the General Convention, including as modified and supplemented below:

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

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

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

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

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

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

Article 18. Experts on mission for the Mechanism

1. Experts on mission for the Mechanism shall enjoy the privileges and immunities, exemptions and facilities as are necessary for the independent performance of their

functions for the Mechanism, and in particular, shall enjoy the privileges and immunities, exemptions and facilities under articles VI and VII of the General Convention.

2. Experts on mission for the Mechanism shall be provided by the Registrar with a document certifying that they are performing functions for the Mechanism and specifying a time period for which their functions will last. This certificate shall be withdrawn prior to its expiry if the expert on mission for the Mechanism is no longer performing functions for the Mechanism, or if the presence of the expert on mission for the Mechanism at the seat of the Mechanism is no longer required.

Article 19. Personnel recruited locally by the Mechanism and not otherwise covered by this Agreement, including such personnel assigned to hourly rates

1. Personnel recruited locally by the Mechanism and not otherwise covered by this Agreement, including such personnel 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 for the Mechanism. Such immunity shall continue to be accorded even after they have ceased to perform their functions for the Mechanism. During their employment, they shall also be accorded such other facilities as may be necessary for the independent performance of their functions for the Mechanism.

2. The terms and conditions of the employment of personnel recruited locally and assigned to hourly rates by the Mechanism shall be in accordance with the relevant United Nations resolutions, decisions, regulations, rules and policies.

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

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

2. Members of their family forming part of the household of officials of the Mechanism who obtain gainful employment shall enjoy no immunity from criminal, civil or administrative jurisdiction with respect to matters arising in the course of or in connection with such employment. However, any measures of execution shall be taken without infringing the inviolability of their person or of their residence, if they are entitled to such inviolability.

3. In case of the insolvency of a person aged under 18 with respect to a claim arising out of gainful employment of that person, the Mechanism shall seek to ensure that the official of the Mechanism of whose family the person concerned is a member, meets their private legal obligations that arise in this connection, and where necessary, the Secretary-General shall give prompt attention to a request for a waiver in this regard.

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

Article 21. Interns

1. Within eight (8) days after the commencement of an internship in the host State, the Mechanism shall request the Ministry of Foreign Affairs to register any intern in accordance with paragraph 2 of this article.

2. The Ministry or Foreign Affairs shall register interns for a maximum period of one (1) year provided that the Mechanism supplies the Ministry of Foreign Affairs with a declaration signed by them, accompanied by adequate proof, to the effect that:

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

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

(*c*) the intern shall not engage in gainful employment in the host State during his or her internship other than as an intern for the Mechanism, unless he or she is otherwise authorized to work in the host State;

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

(*e*) the intern shall leave the host State within fifteen (15) days after the end of the internship, unless he or she is otherwise authorized to stay in the host State.

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

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

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

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

(*b*) inviolability of all official papers and documents in whatever form and materials.

6. The Mechanism shall notify the Ministry of Foreign Affairs of the final departure of the intern from the host State within eight (8) days after such departure, and shall at the same time return the intern's identity card.

7. In exceptional circumstances, the maximum period of one (1) year mentioned in paragraph 2 of this article may be extended once by a maximum period of one (1) year.

Article 22. Defence counsel and persons assisting defence counsel

1. Defence counsel, when holding a certificate that they have been admitted as counsel by the Mechanism and when performing their official functions, and after prior notification by the Mechanism to the host State of their mission, arrival and final departure, shall enjoy the same privileges, immunities and facilities as are accorded to experts on mission for the United Nations under article VI, section 22, paragraphs (*a*)–(*c*) of the General Convention, including as modified and supplemented below:

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

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

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

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

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

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

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

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

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

3. Upon receipt of the certificate in accordance with paragraph 2 of this article, the Ministry of Foreign Affairs shall issue an identity card to defence counsel, should they be required to stay in the host State for a period longer than 90 days and hold a non-European Union nationality.

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

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

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

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

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

(*d*) for the purpose of their communications in pursuance of their functions as defence counsel, the right to receive and send papers in whatever form.

6. Defence counsel shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Mechanism.

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

8. At the final departure of defence counsel or when defence counsel has ceased to perform his or her functions for the Mechanism, the identity card referred to in paragraph 3 of this article shall be promptly returned by the Mechanism to the Ministry of Foreign Affairs.

9. The provisions of this article shall apply, *mutatis mutandis*, to persons assisting defence counsel, recognised by the Registrar as such, in accordance with the relevant rules and procedures.

Article 23. Witnesses

1. Without prejudice to the obligation of the host State to comply with requests for assistance made or orders issued by the Mechanism pursuant to article 28 of the Statute, witnesses shall be accorded the following privileges, immunities and facilities as are necessary for the proper functioning of the Mechanism, subject to the production of the document referred to in paragraph 2 of this article:

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

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

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

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

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

(*f*) for the purpose of their communications with the Mechanism and with defence counsel in connection with their appearance or testimony, the right to receive and send papers in whatever form; and

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

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

3. The privileges, immunities and facilities referred to in paragraph 1 of this article, except for that referred to in paragraph 1(*c*) of this article, shall cease to apply after fifteen (15) consecutive days following the date on which the presence of the witness concerned is no longer required by the Mechanism, provided that such witness had an opportunity to leave the host State during that period.

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

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

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

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

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

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

6. The Registrar shall take all necessary measures to arrange the relocation without delay to third States of witnesses who for security reasons cannot return to their home countries or their countries of permanent residence after appearing or testifying before the Mechanism.

Article 24. Other persons required to be present at the seat of the Mechanism

1. Other persons required to be present at the seat of the Mechanism shall, to the extent necessary for the proper functioning of the Mechanism, be accorded the following privileges, immunities and facilities, subject to the production of the document referred to in paragraph 2 of this article:

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

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

(*c*) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their presence at the scat of the Mechanism, which immunity shall continue to be accorded even after they are no longer present at the seat of the Mechanism;

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

(*e*) exemption from immigration restrictions and alien registration when they travel to and from the Mechanism for purposes of their presence at the seat of the Mechanism.

2. Persons referred to in this article shall be provided by the Registrar with a document certifying that their presence is required at the seat of the Mechanism and specifying a time period during which such presence is necessary. Such document shall be withdrawn prior to its expiry if their presence at the seat of the Mechanism is no longer required.

3. The privileges, immunities and facilities referred to in paragraph 1 of this article, except for that referred to in paragraph 1(*c*) of this article, shall cease to apply after fifteen (15) consecutive days following the date on which the presence of the person

concerned is no longer required by the Mechanism, provided that the person had an opportunity to leave the host State during that period.

4. Persons referred to in this article who are nationals or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, as is necessary for the proper functioning of the Mechanism, immunity from legal process in respect of words spoken or written and all acts performed by them in the course of their presence at the seat of the Mechanism. Such immunity shall continue to be accorded even after their presence at the seat of the Mechanism is no longer required.

5. Persons referred to in this article shall not be subjected by the host State to any measure which may affect their presence at the seat of the Mechanism.

Part IV. Waiver of privileges, immunities, and facilities

Article 25. Waiver of privileges, immunities and facilities

1. The privileges, immunities and facilities provided for in articles 16, 17, 18, 19, 21, 22, 23, and 24 of this Agreement are granted in the interests of the Mechanism and not for the personal benefit of the individuals themselves.

2. The Secretary-General shall have the right and duty to waive the immunity granted under this Agreement of any person in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Mechanism.

Part V. Cooperation between the Mechanism and the host State

Section 1: General

Article 26. General cooperation between the Mechanism and the host State

1. Whenever this Agreement imposes obligations on the competent authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government of the host State.

2. The host State shall promptly inform the Mechanism of the office designated to serve as the official contact point and to be primarily responsible for all matters in relation to this Agreement, as well as of any subsequent changes in this regard.

3. The Registrar, or an official designated by him or her, shall serve as the official contact point for the host State and shall be primarily responsible for all matters in relation to this Agreement. The host State shall be informed promptly about this designation and of any subsequent changes in this regard.

Article 27. Cooperation with the competent authorities

1. The Mechanism shall cooperate at all times with the competent authorities to facilitate the proper administration of justice and the enforcement of the laws of the host State, to secure the observance of police regulations and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.

2. The Mechanism and the host State shall cooperate on security matters, taking into account the public order and national security interests of the host State.

3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons enjoying such privileges, immunities and facilities to respect the laws and regulations of the host State and not to interfere in the internal affairs of the host State.

4. The Mechanism shall cooperate with the competent authorities responsible for health, safety at work, electronic communications and fire prevention.

5. The Mechanism shall observe all security directives as agreed with the host State, as well as all directives of the competent authorities responsible for fire prevention regulations.

Article 28. Notification and Identification Cards

1. The Registrar, or an official designated by him or her, shall promptly notify the host State of:

(*a*) the appointment of officials of the Mechanism, the date of their arrival or commencement of their functions and their final date of departure or termination of their functions with the Mechanism;

(*b*) the arrival and final departure date of members of their family forming part of the household of the persons referred to in subparagraph 1(*a*) of this article and, where appropriate, the fact that a person has ceased to form part of the household; and

(*c*) the arrival and final departure date of private or domestic servants of persons referred to in subparagraph 1(*a*) of this article and, where appropriate, the fact that they are leaving the employ of such persons.

2. The host State shall issue to the officials of the Mechanism and to members of their family forming part of the household and to their private or domestic servants an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to the competent authorities.

3. At the final departure of the persons referred to in paragraph 2 of this article or when these persons have ceased to perform their functions for the Mechanism, the identity card referred to in paragraph 2 of this article shall be promptly returned by the Mechanism to the Ministry of Foreign Affairs.

Article 29. Social security regime

The social security systems of the Mechanism offer coverage comparable to the coverage under the legislation of the host State. Accordingly, officials of the Mechanism to whom the aforementioned scheme applies shall be exempt from the social security provisions of the host State. Consequently, officials of the Mechanism shall not be covered against the risks described in the social security provisions of the host State. This exemption applies to them, unless they take up gainful activity in the host State.

SECTION 2: VISAS, PERMITS AND OTHER DOCUMENTS

Article 30. Visas for officials of the Mechanism, defence counsel and persons assisting defence counsel and experts on mission for the Mechanism

1. Officials of the Mechanism, defence counsel and persons assisting defence counsel and experts on mission for the Mechanism, as notified as such by the Registrar, or an official designated by him or her to the host State, shall have the right of unimpeded entry

into, exit from and movement within the host State, including unimpeded access to the premises of the Mechanism.

2. Visas, where required, shall be granted free of charge and as promptly as possible.

3. Applications for visas from members of their family forming part of the household of the persons referred to in paragraph 1 of this article, where required, shall be processed by the host State as promptly as possible and granted free of charge.

Article 31. Visas for witnesses, interns, and other persons required to be present at the seat of the Mechanism

1. All persons referred to in articles 21, 23, and 24 of this Agreement, as notified as such by the Registrar, or an official designated by him or her to the host State, shall have the right of unimpeded entry into, exit from and, subject to paragraph 3 of this article, movement within the host State, as appropriate and for the purposes of the Mechanism.

2. Visas, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses, who have been notified as such by the Registrar, or an official designated by him or her to the host State.

3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned. Before applying paragraph 3 of this article, the host State will seek observations from the Mechanism.

4. The host State shall, as necessary, facilitate the entry into, exit from and movement within the host State for persons suspected or accused of contempt of court against whom no arrest warrant is in force at the time of entry of the individual into the host State, provided that any public order or security concerns of the host State are taken into account.

Article 32. Visas for visitors of persons detained by the Mechanism

1. The host State shall make adequate arrangements by which visas for visitors of persons detained by the Mechanism are processed promptly. Visas for visitors who are family members of a person detained by the Mechanism shall be processed promptly and may be issued, where appropriate, free of charge or for a reduced fee.

2. Visas for the visitors referred to in paragraph I of this article may be subject to territorial limitations. Visas may be refused in the event that:

(*a*) the visitors referred to in paragraph I of this article cannot produce documents justifying the purpose and conditions of the intended stay and demonstrating that they have sufficient means of subsistence for the period of the intended stay and sufficient means for the return to the country of origin or transfer to a third State into which they are certain to be admitted, or that they are in a position to acquire such means lawfully;

(*b*) an alert has been issued against them for the purpose of refusing entry; or

(*c*) they must be considered a threat to public order, national security or the international relations of any of the Contracting Parties to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders.

3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned.

4. Before applying paragraphs 2 or 3 of this article, the host State will seek observations from the Mechanism.

Article 33. Laissez-passer and United Nations Certificate

1. The host State shall recognize and accept the United Nations *laissez-passer* as a valid travel document. Where applicable, the host State further agrees to issue any required visas in the United Nations *laissez-passer*.

2. The host State shall recognize and accept in accordance with the provisions of section 26 of the General Convention the United Nations certificate issued to persons travelling on the business of the Mechanism.

3. Holders of a *laissez-passer* or a certificate indicating that they are travelling on the business of the Mechanism shall be granted facilities for speedy travel.

Article 34. Driving licence

1. During their period of employment with the Mechanism, officials of the Mechanism, as well as members of their family forming part of the household and their private servants, shall be allowed to obtain from the host State a driving licence on presentation of their valid foreign driving licence or to continue to drive using their own valid foreign driving licence, provided they are in possession of an identity card issued by the host State in accordance with article 28 of this Agreement.

2. During the period of their assignment, any person issued an identity card by the host State shall be allowed to continue to drive using their own valid foreign driving licence.

Section 3: Security, operational assistance

Article 35. Security, safety and protection of persons referred to in this Agreement

1. Without prejudice to the privileges, immunities and facilities granted under this Agreement, the competent authorities shall take effective and adequate action which may be required to ensure the security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Mechanism, free from interference of any kind.

2. The Mechanism shall cooperate with the competent authorities with a view to facilitating the observance by all persons referred to in this Agreement of the directives necessary for their security and safety, as given to them by the competent authorities.

3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons referred to in this Agreement to observe the directives necessary for their security and safety, as given to them by the competent authorities.

Article 36. Transport of persons detained by the Mechanism

1. The transport of persons detained by the Mechanism pursuant to the Statute and the Rules of Procedure and Evidence from the point of arrival in the host State to the

premises of the Mechanism shall, at the request of the Mechanism, be carried out by the competent authorities of the host State in consultation with the Mechanism.

2. The transport of persons detained by the Mechanism pursuant to the Statute and the Rules of Procedure and Evidence from the premises of the Mechanism to the point of departure from the host State shall, at the request of the Mechanism, be carried out by the competent authorities of the host State in consultation with the Mechanism.

3. Any transport of persons detained by the Mechanism pursuant to the Statute and the Rules of Evidence in the host State outside the premises of the Mechanism shall, at the request of the Mechanism, be carried out by the competent authorities of the host State in consultation with the Mechanism.

4. The Mechanism shall give reasonable notice to the competent authorities of the host State in case of a request for transport of persons referred to in this article. Whenever possible, 72 hours advance notice will be given.

5. Where the host State receives a request under this article and identifies problems in relation to the execution of the request, it shall consult with the Mechanism, without delay, in order to resolve the matter. Such problems may include, *inter alia*:

(*a*) insufficient time and/or information to execute the request;

(*b*) the impossibility, despite best efforts, to make adequate security arrangements for the transport of the person; or

(*c*) the existence of a threat to public order and security in the host State.

6. A person detained by the Mechanism pursuant to the Statute and the Rules of Procedure and Evidence shall be transported directly and without impediment to the destination specified in paragraphs I and 2 of this article or to any other destination as requested by the Mechanism under paragraph 3 of this article.

7. The Mechanism and the host State shall, as appropriate, make practical arrangements for the transport of persons detained by the Mechanism pursuant to the Statute and the Rules of Procedure and Evidence in accordance with this article.

Article 37. Cooperation in detention matters

1. The host State shall cooperate with the Mechanism to facilitate the detention of persons and to allow the Mechanism to perform its functions within its detention centre.

2. Where the presence of a person in custody is required for the purpose of giving testimony or other assistance to the Mechanism and where, for security reasons, such a person cannot be maintained in custody in the detention centre of the Mechanism, the Mechanism and the host State shall consult and, where necessary, make arrangements to transport the person to a prison facility or other place made available by the host State.

Article 38. Provisional release

1. The host State shall facilitate the transfer of persons granted provisional release into a State other than the host State.

2. The host State shall facilitate the re-entry into the host State of persons granted provisional release, and their short-term stay in the host State, for any purpose related to proceedings before the Mechanism.

3. The Mechanism and the host State shall make practical arrangements as to the implementation of this article.

Article 39. Release

1. Where a person is released from the custody of the Mechanism following the person's acquittal at trial or on appeal, or for any other reason, the Mechanism shall, as soon as possible, make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, to a State which is obliged to receive him or her, to another State which agrees to receive him or her or to a State which has requested his or her extradition with the consent of the original surrendering State.

2. The provisions of article 36 of this Agreement shall apply, *mutatis mutandis*, to the transport of persons referred to in this article within the host State.

3. A person referred to in this article shall not remain on the territory of the host State except with the latter's consent.

Article 40. Enforcement of sentences

Imprisonment shall be served in a State designated by the Mechanism from among those States with which the United Nations has agreements for this purpose in accordance with article 25 of the Statute. The Mechanism shall begin the process of designating a State of enforcement as soon as possible.

Article 41. Limitation to the exercise of jurisdiction by the host State

1. The host State shall not exercise its jurisdiction or proceed with a request for extradition from another State with regard to persons who appear before and who are prosecuted by the Mechanism for any acts, omissions or convictions prior to their entry into the territory of the host State except as may be provided for in the Rules of Procedure and Evidence.

2. The immunity provided for in this article shall cease when the person, having been acquitted, released or is otherwise no longer required by the Mechanism and having had for a period of fifteen (15) consecutive days from that date an opportunity of leaving, has nevertheless remained in the territory of the host State, or having left it, has returned.

PART VI. FINAL PROVISIONS

Article 42. Supplementary arrangements and agreements

1. The provisions of this Agreement shall be supplemented at the time of signature by an exchange of letters which confirms the joint understandings of the Agreement by the Parties.

2. The Mechanism and the host State may, for the purpose of implementing this Agreement or of addressing matters not foreseen in this Agreement, make supplementary arrangements and agreements as appropriate.

Article 43. Settlement of disputes with third parties

The Mechanism shall make provisions for appropriate modes of settlement of:

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

(*b*) disputes involving any person referred to in this Agreement who, by reason of his or her official position or function in connection with the Mechanism, enjoys immunity, if such immunity has not been waived by the Secretary-General.

Article 44. Settlement of differences on the interpretation or application of this Agreement or supplementary arrangements or agreements

1. All differences arising out of the interpretation or application of this Agreement or supplementary arrangements or agreements between the Parties shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 of this article within three months following a written request by one of the Parties to the difference, it shall, at the request of either Party, be referred to 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 (15) days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint 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 45. Application

This Agreement shall apply to the part of the Kingdom of the Netherlands in Europe only.

Article 46. Amendments and termination

1. This Agreement may be amended by mutual consent of the Parties.

2. This Agreement shall be reviewed at the request of either Party to consider amendments in light of privileges, immunities, facilities and treatment accorded by the host State to any comparable international organization or tribunal more favourable than comparable privileges, immunities, facilities and treatment in this Agreement.

3. This Agreement shall cease to be in force by mutual consent of the Parties, if the seat of the Mechanism is removed from the territory of the host State or if the Mechanism is dissolved, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Mechanism at its seat in the host State and the disposition of its property therein, as well as provisions granting immunity from legal process of every kind in respect of words spoken or written or all acts performed in an official capacity under this Agreement.

Article 47. Interpretation of agreements

The provisions of this Agreement shall be complementary to the provisions of the General Convention and the Vienna Convention, the latter Convention only insofar as it is relevant for the diplomatic privileges, immunities and facilities accorded to the

appropriate categories of persons referred to in this Agreement. Insofar as any provision of this Agreement and any provisions of the General Convention and the Vienna Convention relate to the same subject matter, each of these provisions shall be applicable and neither shall narrow the effect of the other.

Article 48. Entry into force

1. This Agreement shall enter into force on the first day of the second month after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

2. Upon entry into force of this Agreement, the Agreement Concerning the Headquarters 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 signed on 29 July 1994 and the Agreement Regarding the Applicability of the Headquarters Agreement of the International Tribunal for the Former Yugoslavia to the activities and proceedings of the International Criminal Tribunal for Rwanda in the territory of the Kingdom of the Netherlands, 22 and 24 April 1996, and any respective supplementary agreements the contents of which have been addressed by this Agreement, shall terminate and this Agreement shall apply *mutatis mutandis* to the ICTY and ICTR.

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

Done at New York on the 23rd day of February in the year Two Thousand and Fifteen, in duplicate, in the English language.

For the United Nations	For the Government of the Kingdom of the Netherlands
[*Signed*] Mr. Miguel de Serpa Soares	[*Signed*] Mr. Karel Jan Gustaaf van Oosterom
Under-Secretary-General for Legal Affairs and United Nations Legal Counsel	Permanent Representative of the Kingdom of the Netherlands to the United Nations

I

New York, 23 February 2015

On the occasion of the signing of the Agreement between the Kingdom of the Netherlands and the United Nations concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals, I would like to refer to the discussions held between representatives of the United Nations and the Kingdom of the Netherlands concerning the interpretation of certain provisions of the Agreement.

I have the honour to confirm on behalf of the Government of the Netherlands the following understandings.

Without prejudice to the rules and regulations of the Mechanism, it is the understanding of the Parties that the following persons will, for the purposes of this Agreement, and this Agreement only, be considered as members of their family forming part of the household of the judges, the Prosecutor, the Registrar, staff of the Mechanism and defence counsel:

(*a*) spouses or registered partners of the judges, the Prosecutor, the Registrar, staff of the Mechanism and defence counsel;

(*b*) children of the judges, the Prosecutor, the Registrar, staff of the Mechanism and defence counsel who are under the age of 18;

(*c*) children of the judges, the Prosecutor, the Registrar, staff of the Mechanism and defence counsel, aged 18 or over, but not older than 27, provided that they formed part of the household prior to their first entry into the host State and still form part of this household, and that they are unmarried, financially dependent on the judge, Prosecutor, Registrar, member of the staff of the Mechanism or defence counsel concerned and are attending an educational institution in the host State;

(*d*) children of the judges, the Prosecutor, the Registrar, staff of the Mechanism and defence counsel aged 18 or over, but not older than 23, will also be recognized as members of their family forming part of the household if they are not studying as long as they are unmarried and financially dependent on the judge, Prosecutor, Registrar or member of the staff of the Mechanism or defence counsel concerned;

(*e*) other persons who, in exceptional cases or for humanitarian reasons, the Mechanism and the host State decide to treat as members of their family forming part of the household.

With respect to article 16, paragraph 1, it is the understanding of the Parties that with respect to judges of the Mechanism, "when engaged on the business of the Mechanism" includes not only when a judge is activated for duty from a roster, but also includes when a judge performs functions for the Mechanism, such as attending a plenary meeting, that may not require activation of the judge from the roster. The United Nations will determine when a judge is "engaged on the business of the Mechanism".

With respect to article 16, paragraph 5, it is the understanding of the Parties that nothing in this provision precludes the Mechanism from exercising its rights under article 46, paragraph 2.

With respect to article 21, subparagraph 2(*d*), it is the understanding of the Parties that this prohibition does not apply to fellows who are sponsored by other international organizations or states and who perform functions as staff members though they are not formally recruited as such, so long as they are at the Mechanism for a period longer than six (6) months.

With respect to article 23, paragraph 6, it is the understanding of the Parties that in regard to relocation of witnesses who for security reasons cannot return to their home countries or their countries of permanent residence after appearing or testifying before the Mechanism, the Mechanism relies on the cooperation by third States.

With respect to article 28, paragraph 2, it is furthermore the understanding of the Parties that in exceptional cases and on an ad-hoc basis, the host State may, by the reasoned request of the Mechanism, issue an identity card to a person required to be at the seat of

the Mechanism for an extended period of time, but who is not entitled to an identity card under this Agreement.

With respect to article 46, paragraph 2, it is the understanding of the Parties that the host State shall provide persuasive reasons for not according to the Mechanism the same treatment as accorded to other comparable international organizations or tribunals when that treatment is considered by the Mechanism to be more favourable.

I should be grateful if you could confirm on behalf of the United Nations that the above is also the understanding of the United Nations.

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

[*Signed*] Karel J.G. van Oosterom
Ambassador

II

23 February 2015

Excellency,

I have the honour to acknowledge receipt of your letter of 23 February 2015, in which you set out your Government's understandings regarding the interpretation of certain provisions of the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals.

In accordance with your request, I wish to confirm, on behalf of the United Nations, that the understandings reflected in your letter conform with those of the United Nations.

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

Yours sincerely,

[*Signed*] Miguel de Serpa Soares
Under-Secretary-General for Legal Affairs
and United Nations Legal Counsel

(*b*) Protocol of amendment of the Memorandum of Understanding between the United Nations and the Government of the Italian Republic regarding the use by the United Nations of premises on military installations in Italy for the support of peacekeeping, humanitarian and related operations. New York, 28 April 2015*

Whereas on 23 November 1994 the United Nations and the Government of the Italian Republic signed the Memorandum of Understanding between the United Nations and the

* Entered into force 5 September 2016, in accordance with article XII. United Nations registration no. A-33839. The text of the annex is not reproduced herein.

Government of the Italian Republic regarding the Use by the United Nations of Premises on Military Installations in Italy for the Support of Peacekeeping, Humanitarian and Related Operations (the "MOU");

Whereas, since the signature of the MOU, a significant expansion of the United Nations Logistics Base (UNLB) logistics and support functions has taken place to respond to the growing needs of peacekeeping, humanitarian and related operations, as noted by the General Assembly in its resolution 64/269 of 3 August 2010, and new facilities have consequently been provided by the Government of the Italian Republic;

Whereas the Parties recognize that the United Nations Logistics Base is likely to further expand its activities to respond to the growing needs of peacekeeping operations, and the consequent increase in the number of its personnel;

Whereas, by its resolution 1502 (2003) of 26 August 2003, the Security Council requested the Secretary-General of the United Nations to seek the inclusion of, and that host countries include, key provisions of the Convention on the Safety of United Nations and Associated Personnel, including among others, those regarding prevention of attacks against members of United Nations operations, the establishment of such attacks as crimes punishable by law and the prosecution and extradition of offenders, in future as well as, if necessary, existing status-of-forces, status-of-mission and host country agreements;

Whereas the Parties wish to amend the MOU to include key provisions of the Convention on Safety of United Nations and Associated Personnel,

Now, therefore, the United Nations and the Government of the Italian Republic hereby agree to amend the MOU as follows:

Article I

The words "Republic of Italy" in the MOU shall be replaced throughout the text of the MOU with "Italian Republic".

Article II. Amendments to article III (Application of the Convention)

A second sentence shall be inserted in article III so that the provision reads as follows:

"The United Nations, its property, finds and assets, wherever located and by whomsoever held, including equipment and materials leased, chartered or otherwise made available to the United Nations for its peacekeeping, humanitarian and related operations, as well as members assigned to Premises and experts on mission shall enjoy the privileges, immunities, exemptions and facilities provided for in the Convention. In the event that legal process is brought against the United Nations in connection with the use of the Premises, the appropriate Italian authorities shall take appropriate action to assert the privileges and immunities of the United Nations before the courts of the Italian Republic."

Article III. Amendments to article VIII (Goods, Services and Facilities on Military Installations)

Article VIII, paragraph 1, second sentence, shall be amended to read as follows:

"However, the United Nations shall reimburse the Government, or exercise the share swap—through the provision of goods and services—or other modes provided by current law, for costs it may incur in excess of the Government's normal

costs, as described in the preceding provision, which are directly attributable to the United Nations use of Premises. The terms and conditions must be set in specific or locally based Implementation Agreements."

Article IV. Amendments to article IX
(Exemption from Taxation, Duties, Prohibitions and Restrictions)

Article IX, paragraph 3 shall be amended to read as follows:

"3. With respect to value-added taxes ("*Imposta sul Valore Aggiunto (IVA)*"), the United Nations shall enjoy exemption from the payment of such taxes on important purchases. For the purposes of this Agreement, important purchases shall be interpreted as the purchase of goods or the provision of services of a value exceeding the threshold provided for under Italian legislation in respect of international organizations in Italy."

Article V. Amendments to article XI
(Inviolability of Exclusive Use Premises)

1. Article XI shall be amended to read as follows:

"1. Without prejudice to the fact that the Military Installation on which Exclusive Use Premises are located remains under the authority of the appropriate Italian authorities and Government territory, Exclusive Use Premises shall be inviolable and subject to the exclusive control and authority of the United Nations. No officer of the Italian Republic, or other person exercising any public authority within the Italian Republic, shall enter Exclusive Use Premises to perform any duties therein except with the consent of, and under conditions approved by, the United Nations. The consent of the United Nations to such entry shall be presumed in the event of fire or other analogous emergency requiring urgent action. Subsequent procedural arrangements at the local level shall ensure the necessary automation for access in case of urgent technical assistance. Any person who has entered Exclusive Use Premises with the presumed consent of the United Nations, shall, if so requested by the United Nations, leave Exclusive Use Premises immediately. Without prejudice to the provisions of the Convention or this Memorandum of Understanding, the United Nations shall prevent Exclusive Use Premises from being used as a refuge by persons who are required by the Italian Judicial Authority for arrest."

2. A second paragraph shall be added to article XI to read as follows:

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

3. The first paragraph of article XI shall be numbered as paragraph 1.

Article VI. Amendments to article XIII
(Communications Facilities)

1. Article XIII, paragraph 2(*a*) shall be amended to read as follows:

"2. In addition to the provisions of paragraph 1 above,

(*a*) The United Nations shall have the authority to install and operate within Exclusive Use Premises radio sending, receiving and repeater stations as well as satellite systems to connect appropriate points in the Italian Republic with each other and with appropriate points in other countries, and to store and exchange telephone, voice, facsimile, video and other electronic data with the United Nations global telecommunications network and with and between the Specialized Agencies of the United Nations, other related organizations, and any other bodies as appropriate. The telecommunications services shall be operated in accordance with the International Telecommunications Convention and Regulations."

2. Article XIII, paragraph 2(*b*) shall be amended to read as follows:

"(*b*) The United Nations shall enjoy, within the Italian Republic, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, electronic mail, facsimile, or any other means, and of establishing the necessary facilities for maintaining such communications within and between the Premises, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations Use of those local systems by the United Nations shall be charged at the most favourable rate."

3. The following two sub-paragraphs shall be added to article XIII, paragraph 2 after paragraph 2(*b*):

"(*c*) The frequencies on which the services referred to in paragraphs (*a*) and (*b*) above may operate shall be decided upon in cooperation with the appropriate Italian authorities and shall be allocated expeditiously by the appropriate authorities. The United Nations shall be exempt from any and all taxes on, and from any and all fees for, the allocation of frequencies for this purpose, as well as from any and all taxes on, and all fees for, their use.

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

Article VII. Amendments to article XV (Security)

The following paragraph shall be added after paragraph 5 of article XV:

"6. The Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel, to which the Italian Republic is a party, are applied to the United Nations and with respect to members assigned to Premises and visitors at the Premises, as well as their respective property and equipment."

Article VIII. Amendments to article XVI (Travel and Transport)

Article XVI, paragraph 4 shall be amended to read as follows:

"4. Incident to the United Nations use of Exclusive Use Premises, aircraft of the United Nations, including civilian aircraft chartered or leased by the United Nations, and military aircraft of a contributing State providing services to the United Nations, may, upon advance notice and subject to applicable rules and standards of the International Civil Aviation Organization (ICAO), take-off, fly-over, land and park on the territory of the Italian Republic. In particular, such flights are to be performed with jet subsonic

aircrafts compliant with the prescriptions of Chapter 3, part II, Volume I of Annex 16 of ICAO. Such aircraft may use the airport facilities of a Military Installation, subject to the provisions of this Memorandum of Understanding and the terms and conditions set forth in the Implementation Agreement."

Article IX. Amendments to article XVII (Privileges and Immunities)

1. Article XVII, paragraph 1(*d*) shall be amended to read as follows:

"(*d*) be immune, together with their spouses and relatives dependent on them, from immigrations restrictions and alien registration On request from the United Nations, the spouses and immediate relatives dependent on members assigned to Premises, who are resident in the Italian Republic, shall be accorded opportunity to take up employment in the Italian Republic The privileges and immunities set forth in this Memorandum of Understanding shall not apply with respect to such employment. For the application of this paragraph, the UNLB will send a Note Verbale to the Diplomatic Protocol of the Italian Republic informing it of the name of the family member, who resides in Italy, and who has received a job offer on which he/she intends to agree. The Diplomatic Protocol of the Italian Republic will notify expeditiously the UNLB of its consent to initiate the procedure for establishing the employment relationship. The employer, by referring to this MOU, will be able to hire the employee under the Italian law. The above Family members, who have obtained permission to perform a working activity, will be subject to the legislation in force in Italy with regards to tax, social security and work. In the case where the Family member wishes to take up a new working activity that is different from a previous one, or continue a working activity previously completed, the UNLB will have to submit a new request to the Diplomatic Protocol of the Italian Republic."

2. Article XVII, paragraph 1(*g*) shall be amended to read as follows:

"(*g*) have the right to purchase and import for personal use free of customs duties, taxes and other levies, prohibitions and restrictions, automobiles for personal use and articles for personal consumption in accordance with the exemptions normally accorded to members of diplomatic missions, in the Italian Republic. However, with respect to vehicles Imported duty-free, the number shall be limited to two and such vehicles may be replaced only after a period of three years following the date of the preceding importation. Vehicles Imported by members assigned to Premises shall be registered in a special series."

3. Article XVII, paragraph 2 shall be amended to read as follows:

"2. In addition to the privileges and immunities set forth under paragraph 1 above, the official of the United Nations assigned to head the activities of the United Nations on the Premises, as well as members assigned to Premises at the level of P-5 and above, shall be accorded in respect of themselves, their spouses and minor children, the privileges, immunities, exemptions and facilities normally accorded by the Government to members of comparable rank of the diplomatic corps in the Italian Republic."

4. A new paragraph 3 shall be added to article XVII as follows:

"3. The appropriate Italian authorities shall grant entry and stay to one household employee per each internationally recruited staff member assigned to the Premises as speedily as possible, having due regard to the national law of the Italian Republic on immigration. They shall be exempt from work permits or residence permits and not be

subject to the provisions governing immigration restrictions and alien registration, only as far as their working relationship with a staff member is concerned."

Article X. Amendments to article XXI (Identification)

Article XXI, paragraphs 1 and 2, shall be amended to read as follows:

"1. The United Nations shall issue all members assigned to Premises an identification card showing full name, title, United Nations index number (if appropriate) and photograph.

2. Members assigned to Premises shall be required to present, but not to surrender, their United Nations identity cards upon request by appropriate Italian authorities."

Article XI. Amendments to article XXV (Final Provisions)

1. Article XXV, paragraph 3 shall be amended to read as follows:

"3. The United Nations shall have the right, at a minimum, to use and occupy the Premises as a United Nations Logistics Base for ten (10) years from the date of the signature of the Protocol of Amendment of the Memorandum of Understanding between the Government of the Italian Republic and the United Nations regarding the use by the United Nations of Premises on Military Installations in Italy for the Support of Peacekeeping, Humanitarian and Related Operations. This Memorandum of Understanding may be terminated by either the United Nations or the Government of the Italian Republic providing sixty (60) months prior notice in writing."

Article XII. Final Provisions

1. The present Protocol shall enter into force upon its ratification by the Government in accordance with the Italian Republic's constitutional requirements.

2. Except as otherwise amended by the forgoing amendments, all provisions of the MOU remain in full force and effect.

3. For the convenience of the Parties, the text of provisions of the MOU revised by this Protocol is attached to this Protocol as Annex 1. In the event of any inconsistency between the provisions of the MOU and this Protocol, on the one hand, and the provisions of Annex 1 on the other hand, the provisions of the MOU and of this Protocol shall prevail.

Done at New York on 28 April 2015, in two original copies in English.

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

(*c*) Memorandum of Understanding between the United Nations and the International Criminal Court concerning cooperation between the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) and the International Criminal Court. New York, 3 May 2016 and 5 May 2016, and The Hague, 18 May 2016 and 19 May 2016*

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 and the Court have concluded a Memorandum of Understanding between the United Nations, represented by the United Nations Security Coordinator, and the International Criminal Court Regarding Coordination of Security Arrangements (the "MOU on Security Arrangements"), which entered into force on 22 December 2004;

Whereas the United Nations Multidimensional Integrated Stabilization Mission in Central African Republic ("MINUSCA") was established pursuant to United Nations Security Council resolution 2149 (2014) of 10 April 2014 as a subsidiary organ of the United Nations;

Whereas the United Nations Security Council, in its resolution 2217 (2015) of 28 April 2015, decided that the mandate of MINUSCA shall focus on immediate priority tasks including support for national and international justice and the rule of law through arresting and handing over to the CAR authorities those responsible for serious human rights violations and abuse and serious violations of international humanitarian law in the country so that they can be brought to justice, and through cooperation with States of the region as well as the ICC in cases of crimes falling within its jurisdiction;

Whereas the United Nations Security Council condemned strongly all abuses and violations of human rights and violations of international humanitarian law and reiterated that all perpetrators of such acts must be held to account and that some of such acts may amount to crimes under the Rome Statute of the International Criminal Court (the "Rome Statute");

Whereas the transitional authorities or Government of Central African Republic (the "Government") on 30 May 2014 referred the situation in Central African Republic since August 2012 to the Prosecutor of the Court;

Whereas the Prosecutor of the International Criminal Court opened, on 24 September 2014, an investigation into alleged crimes committed on the territory of Central African Republic since August 2012 following the referral of the situation by the Central African authorities on 30 May 2014;

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

* Entered into force 19 May 2016 by signature, in accordance with article 24. United Nations registration no. II-1379. The texts of the annexes are not reproduced herein.

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 15 of the Relationship Agreement, with due regard to its responsibilities and competence under the Charter and subject to its rules as defined under applicable international law, the United Nations undertakes to cooperate with the Court;

Whereas, in article 18 of the Relationship Agreement, the United Nations undertakes, with due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, to cooperate with the Prosecutor of the Court and to enter with the Prosecutor into such arrangements or agreements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises her or his duties and powers with respect to investigation and seeks the cooperation of the United Nations under article 54 of the Statute;

Whereas the United Nations and the Court wish to conclude arrangements of the kind foreseen in articles 10 and 18 of the Relationship Agreement;

Now, therefore, the United Nations, represented by MINUSCA, and the Court, represented by the Registrar and the Prosecutor (the "Registrar" and the "Prosecutor") (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 investigations conducted by the Prosecutor into crimes within the jurisdiction of the Court which may have been committed on the territory of Central African Republic since August 2012.

Article 2. Cooperation

1. The United Nations undertakes to cooperate with the Court, in accordance with the specific modalities set out in this MOU.

2. This MOU may be supplemented from time to time by means of written agreement between the signatories or their designated representatives setting out additional modalities of cooperation between the United Nations and the Court or the Prosecutor as the case may be.

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

1. It is understood that MINUSCA shall afford the assistance and support provided for in this MOU to the extent feasible within its capabilities and areas of deployment and

without prejudice to its ability to discharge its other mandated tasks taking duly into consideration the safety of its members and assets, and its operational priorities.

2. The Court acknowledges that 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 or to article 16 below, neither the United Nations nor MINUSCA shall be responsible for the safety or security of the staff/officials or assets of the Court or of potential witnesses, victims, suspects or accused or convicted persons identified in the course, or as a result, of the Prosecutor's investigations. 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 MINUSCA to ensure or provide for the protection of witnesses, potential witnesses or victims identified or contacted by the Court, including the Prosecutor, in the course of its investigations.

3. The Registrar and the Prosecutor, as appropriate, shall take all necessary steps within their powers to ensure the discipline and orderly conduct of all the staff/officials of the Court and victims, witnesses, defence counsel and defence team members and counsel for victims and their team members at all times while they are on MINUSCA premises, in MINUSCA vehicles or under the immediate protection of MINUSCA and shall ensure that they comport themselves in a manner that respects and preserves the exclusively international character of MINUSCA and its premises, vehicles and personnel and does not prejudice in any way the security or proper conduct of MINUSCA's operations or activities.

Article 4. Reimbursement

1. All services, facilities, cooperation, assistance and other support that may be provided to the Court by the United Nations, including MINUSCA pursuant to this MOU shall be provided on a fully reimbursable basis.

2. The Court shall reimburse the United Nations, including MINUSCA in full for and in respect of all clearly identifiable costs that the United Nations, including MINUSCA, may incur as a result of or in connection with providing services, facilities, cooperation, assistance or support pursuant to this MOU.

3. It is understood that the clearly identifiable costs referred to in paragraph 2 above, include the costs of the administrative overheads involved in providing services, facilities, cooperation, assistance or support to the Court pursuant to this MOU and that these administrative costs shall be reimbursed to the United Nations at the rate of 14 per cent of the direct costs incurred by the United Nations, including MINUSCA, as a result of or in connection with the provision of such services, facilities, cooperation, assistance or support to the Court pursuant to this MOU.

4. The Court shall not be required to reimburse the United Nations, including MINUSCA for or in respect of:

(*a*) costs that the United Nations, including MINUSCA would have incurred regardless of whether or not services, facilities, cooperation, assistance or support were provided to the Court pursuant to this MOU;

(*b*) depreciation in the value of United Nations or contingent owned equipment, vehicles, vessels or aircraft that might be used by the United Nations, including MINUSCA in the course of providing services, facilities, cooperation, assistance or support pursuant to this MOU.

Chapter II: Services, facilities and support

Article 5. Administrative and logistical services

1. MINUSCA is prepared, at the request of the Court, to provide administrative and logistical services to the Court, including:

(*a*) access to MINUSCA's information technology (IT) facilities in areas where available, subject to compliance with MINUSCA's information technology protocols, policies and rules, in particular with respect to the use of external applications and the installation of software;

(*b*) with the prior written consent of the Government and on the understanding that the Court purchases compatible equipment for that purpose, access to MINUSCA's internal telecommunications facilities (PABX) and its two-way radio security channels for the purpose of communications within Central African Republic;

(*c*) storage for items of equipment or property owned by the Court on a space-available basis, it being understood that risk of damage to, or deterioration or loss of, such equipment or property during its storage by MINUSCA shall lie with the Court. The Court hereby agrees to release the United Nations, including MINUSCA, and their officials, agents, servants and employees from any claim in respect of damage to, or deterioration or loss of, such equipment or property;

(*d*) provided that (i) staff/officials of the Court, and (ii) victims, witnesses, defence counsel, defence team members, and counsel for victims and their team members travelling for Court related purposes ("Other Persons") are lawfully entitled to benefit from the same immigration formalities on their entry into and departure from Central African Republic as members of MINUSCA, assistance to staff/officials of the Court and Other Persons in completing those formalities when arriving or departing on flights that are also carrying members of MINUSCA. It is understood that it is the Court's responsibility to ensure that its staff/officials and Other Persons are in possession of appropriate travel documents and that MINUSCA is not in a position to resolve any travel, immigration or departure problems for staff/officials of the Court and Other Persons;

(*e*) on an exceptional basis and with the prior written consent of the Government, temporary or overnight accommodation for staff/officials of the Court, and Other Persons travelling for Court related purposes on MINUSCA premises, it being understood that MINUSCA will consider requests for such services on a case-by-case basis, taking duly into consideration the accommodation needs and security of its own members and assets and the availability of alternative suitable accommodation in the vicinity. It shall be a condition of the accommodation of any staff/officials of the Court on MINUSCA premises that he or she first signs 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 advise Other Persons of the need to complete this waiver as a condition of their receiving temporary or overnight accommodation. MINUSCA and the Court shall make practical arrangements for the transmittal to MINUSCA of completed and signed waivers at least 5 (five) working days in advance of the arrival of the staff/officials and Other Persons concerned at MINUSCA premises at which they are to be accommodated. The United Nations shall not be responsible in any way for the safety or security of any staff/officials and Other Persons of the Court who are accommodated on MINUSCA premises pursuant to a request by the Court;

(*f*) Access to MINUSCA'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 MINUSCA is in a position to guarantee parts, consumables or workmanship;

(*g*) sale, at prevailing market rates, of computing equipment and supplies and of Post Exposure Prophylaxis (PEP) kits, subject to availability and to the priority that is to be accorded to MINUSCA's own operational requirements, it being understood that such items can only be sold where no alternative sources are available or in emergency situations and provided that MINUSCA has surplus emergency stocks;

(*h*) geographic or cartographic information relating to a particular area, including cartographic outputs in digital or paper format from existing MINUSCA resources.

2. The Court shall make requests for such services in writing, preferably on a quarterly basis, and in any event not less than 30 (thirty) days before the service is required. In making such requests, the Court shall specify the nature of the administrative or logistical services sought, when and where they are sought and for how long. MINUSCA shall inform the Court in writing whether or not it accedes to a request as soon as possible and in any event within 10 (ten) working days of its receipt. In the event that it accedes to a request, MINUSCA shall simultaneously inform the Court in writing of the date on which it is able to commence provision of the services concerned and of their estimated cost.

3. Should MINUSCA, in its sole discretion, determine that the provision of the administrative or logistical services requested by the Court is beyond the staffing capabilities of MINUSCA, MINUSCA shall nevertheless provide such services if the Court first agrees to provide MINUSCA with the funds needed by it to recruit and pay for the services of additional administrative support staff to assist MINUSCA in performing the said administrative or logistical services and provides all related infrastructure and common services requirements necessary to accommodate such staff.

Article 6. Medical Services

1. In the event of a medical emergency affecting staff/officials of the Court while they are present in MINUSCA's areas of deployment, MINUSCA undertakes, subject to availability and to the security of its own members and assets, to provide, on request by the Court:

(*a*) on-site medical support to the staff/officials of the Court concerned, and

(*b*) transportation to the nearest available appropriate medical facility, including emergency medical evacuation services to an appropriate country, it being understood that it is the Court's responsibility to arrange for subsequent hospitalisation and further medical treatment in that country,

it being further understood that, in the provision of such services, staff/officials of the Court shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations.

2. MINUSCA shall provide Level I medical services for staff/officials of the Court at MINUSCA's United Nations-owned medical facilities in Central African Republic on a space-available basis, it being understood that, in the delivery of such services, staff/officials shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations.

3. For witnesses that could be evacuated or sheltered on an emergency basis by MINUSCA, MINUSCA shall provide for them emergency medical services at MINUSCA's United Nations-owned medical facilities in Central African Republic on a space-available basis.

4. The Court shall advise its staff/officials travelling to Central African Republic on official business of the requirement to complete and sign a release from liability form (the Release from Liability Form), as set out in Annex B 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 Central African Republic. MINUSCA and the Court shall make practical arrangements for the transmittal to MINUSCA of completed and signed forms in advance of the arrival of the staff/officials concerned in Central African Republic. Without prejudice to the foregoing, it is nevertheless understood that no staff/officials of the Court will be denied medical services provided for in this MOU solely on the grounds of his or her not having previously completed and signed a Release from Liability Form if, at the time of the medical emergency or of arrival at the medical facility, he or she is physically unable to complete and sign such a form.

5. The present article applies *mutatis mutandis* to defence counsel and counsel for victims as well as the members of their team in a case before the Court, where such persons are not staff/officials of the Court.

Article 7. Transportation

1. At the request of the Court and subject to prior signature of a waiver of liability by the staff/officials of the Court concerned as set out in Annex C of this MOU, MINUSCA shall provide aircraft passenger services to staff/officials of the Court, on a space-available basis, aboard its regular flights, it being understood that, in the provision of such services, staff/officials of the Court shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations.

2. MINUSCA is prepared to give favourable consideration, when appropriate and on a case-by-case basis, to requests by the Court for additional ground time at landing sites subject to operational limitations.

3. MINUSCA may provide special flights to the Court, where possible, at the Court's request on a full cost reimbursement basis.

4. At the request of the Court and with the prior written consent of the Government, MINUSCA may provide assistance to the Court by transporting on MINUSCA aircraft witnesses who are voluntarily cooperating with the Court. MINUSCA will consider such requests on a case-by-case basis, taking duly into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities, seat availability on MINUSCA aircraft and the availability of alternative means of transportation, such as commercial flights. Neither MINUSCA nor the United Nations shall be responsible for the security or safety of any witnesses whom MINUSCA might transport on its aircraft in response to such requests. It shall be a condition to the transportation of any witness on MINUSCA aircraft pursuant to such a request that the witness concerned first sign a waiver of liability as set out in Annex D of this MOU and that staff/officials of the Court accompany the witness during the entire period of his or her transportation by MINUSCA. In the event that it is necessary to protect the identity of a

particular witness, the Court and MINUSCA shall consult with each other, at the Court's request, with a view to putting in place practical arrangements that will make it possible for the witness concerned to complete the waiver of liability as set out in Annex D of this MOU while at the same time protecting his or her identity.

5. At the request of the Court and subject to the signature of a waiver of liability by the staff/officials of the Court concerned as set out in Annex E of this MOU, MINUSCA shall provide transportation in its motor vehicles to staff/officials of the Court on a space-available basis, it being understood that, in the provision of such services, staff/officials of the Court shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations.

6. At the request of the Court and with the prior written consent of the Government, MINUSCA may provide assistance to the Court by transporting in MINUSCA motor vehicles witnesses who are voluntarily cooperating with the Court. The provisions of paragraph 4 of this article shall apply in respect of such requests, *mutatis mutandis*, except that the waiver that is to be signed by any witness who may be transported by MINUSCA pursuant to any such request shall be as set out in Annex E of this MOU.

7. At the request of the Court, MINUSCA shall provide air or ground transportation services for items of Court-owned equipment or property on a space-available basis, it being understood that, in the provision of such services, items of Court-owned equipment or property shall be accorded the same priority as is accorded to equipment or property of the specialized agencies and of the other related organizations of the United Nations. Risk of damage to, or loss of, items of Court-owned equipment or property during such transportation shall lie with the Court. The Court hereby agrees to release the United Nations, including MINUSCA, from any claim in respect of damage to, or loss of, such equipment or property.

8. The Court shall make all requests regarding the provision of transportation by MINUSCA under this article in writing, preferably on a quarterly basis and in any event not less than 30 (thirty) days before the service is required. In making such requests, the Court shall specify for whom or what and the date on, and the locations between, which transportation is sought. MINUSCA shall inform the Court in writing whether or not it accedes to a request as soon as possible and in any event within 10 (ten) working days of its receipt. If MINUSCA accedes to a request, it shall simultaneously provide the Court with a written estimate of the cost of the transportation services chargeable to it.

9. Without prejudice to article 4 of this MOU, it is understood that costs that are reimbursable by the Court in connection with services provided pursuant to this article shall include, *inter alia*, those arising from the payment by the United Nations of any additional insurance premiums and of any increase in fees for the charter of aircraft and, in the case of any special flights provided pursuant to paragraph 3 of this article, the cost of fuel consumed by United Nations or contingent owned aircraft and of helicopter or aircraft flying hours.

10. MINUSCA confirms to the Court that it is prepared, in principle, to give consideration to requests from the Government to assist the Government in the transportation of:

(*a*) suspects or accused persons, for the purpose of their transfer to the Court;

(*b*) witnesses who have received a summons from the competent authorities of Central African Republic to attend for questioning, for the purpose of their transfer to the location in Central African Republic identified in that summons.

11. At the request of the Court, MINUSCA is prepared to arrange for the rental by the Court from commercial operators of motor vehicles for the purpose of the official travel of its staff/officials. The procurement of such rental services shall be carried out in accordance with the UN Financial Regulations and Rules, provided that the vehicle rental contract will be entered into between the Court and the rental service provider.

12. Paragraphs 1, 5 and 8 of the present article apply *mutatis mutandis* to defence counsel and counsel for victims as well as the members of their team in a case before the Court, where such persons are not staff/officials of the Court, it being understood that such persons shall not be accorded the same priority as staff/officials of the Court.

Article 8. Police and Military Support

1. At the request of the Court and with the prior written consent of the Government, MINUSCA may provide police or military support to the Court for the purpose of facilitating its investigations in areas where MINUSCA police or military units are already deployed.

2. The Court endeavours to make requests for such support in writing, and wherever possible, preferably on a quarterly basis and in any event not less than 30 (thirty) days before the service is required. When making such requests, the Court shall provide such information as the location, date, time and nature of the investigation that is to be conducted and the number of staff/officials of the Court involved, as well as an evaluation of the attendant risks of which the Court may be aware.

3. MINUSCA will review such requests on a case-by-case basis, taking into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities, the consistency of the support requested with its mandate and Rules of Engagement or Directive on the Use of Force and the capacity of the Government to provide adequate security for the investigation concerned. MINUSCA shall inform the Court in writing whether or not it accedes to such requests as soon as possible and in any event within 10 (ten) working days of their receipt.

4. In the event that MINUSCA agrees to a request, MINUSCA shall, on the basis of the information provided by the Court, determine in an operational order the extent, nature and duration of the police or military support to be provided, together with an estimate of the total reimbursable cost of the operation chargeable to the Court. The Court shall acknowledge in writing its agreement to that operational order.

5. Any police or military units and equipment that MINUSCA might deploy pursuant to such an order shall remain exclusively and at all times under MINUSCA's command and control.

6. For the purposes of this article, reference to police support is restricted to support by Formed Police Units (FPUs).

7. Without prejudice to article 4 of this MOU, it is understood that the costs that are reimbursable by the Court in connection with support provided pursuant to this article shall include, *inter alia*, the cost of fuel consumed by United Nations or contingent owned vehicles, vessels or aircraft and of any helicopter or aircraft flying hours.

Chapter III: Cooperation and legal assistance

Article 9. Access to documents and information held by MINUSCA

1. Requests by the Prosecutor for access to documents held by MINUSCA are governed by article 18 of the Relationship Agreement.

2. Requests by the Prosecutor for access to such documents shall be communicated by the Prosecutor in writing to the Under-Secretary-General for Peacekeeping Operations and simultaneously copied to the Legal Counsel of the United Nations and to the Special Representative of the Secretary-General for Central African Republic.

3. Such requests shall identify with a reasonable degree of specificity the document or the category or categories of documents to which the Prosecutor wishes to be afforded access, and shall explain succinctly how and why such document or documents or the information that they contain is relevant to the conduct of the Prosecutor's investigations and explain why that information cannot reasonably be obtained by other means or from some other source.

4. The Under-Secretary-General for Peacekeeping Operations shall respond to the Prosecutor in writing as soon as possible and in any event within 30 (thirty) days of the receipt of the request.

5. The United Nations, acting through the Under-Secretary-General for Peacekeeping Operations, may, on its own initiative make available to the Prosecutor documents held by MINUSCA that the United Nations may have reason to believe may be of use to the Prosecutor in connection with her or his investigations.

6. The United Nations shall endeavour, wherever possible, to accede to the Prosecutor's requests by providing the document or documents to which the Prosecutor wishes to be afforded access and by not placing any conditions, limitations, qualifications or exceptions on their disclosure.

7. Where a document requested contains information the disclosure of which would:

(*a*) endanger the safety or security of any person, or

(*b*) prejudice the security or proper conduct of any operation or activity of the United Nations or of its specialized agencies or related organizations or of its implementing partners or executing agencies, or

(*c*) violate an obligation of confidentiality owed by the United Nations to a third party, or

(*d*) violate or interfere with the privacy of a third person, or

(*e*) undermine or compromise the free and independent decision-making processes of the United Nations, or

(*f*) endanger the security of any Member State of the United Nations,

the United Nations shall nevertheless endeavour, wherever possible, to provide the document concerned to the Prosecutor. To this end, the United Nations may request the order by the Court of appropriate measures of protection in respect of the document or, in the absence of such measures, may place conditions, limitations, qualifications or exceptions on the disclosure of the document or on specified parts of its contents, including the introduction of redactions, for the purpose of preventing the disclosure of information of one or other of the kinds described above in a manner that would endanger the safety or security

of any person or be detrimental to the interests of the United Nations or its Member States or place the United Nations in violation of its obligations.

8. Where it considers there is no other practicable way in which it can respond positively to the Prosecutor's request, the United Nations may, on an exceptional basis, provide documents to the Prosecutor subject to the arrangements and protections provided for in article 18, paragraph 3, of the Relationship Agreement. In such an eventuality, the provisions set out in Annex F to this MOU shall apply.

9. It is understood that, in the normal course of events, the United Nations will provide the Prosecutor with photocopies of documents held by MINUSCA and not with original versions. The United Nations is, nevertheless, prepared, in principle, to make available to the Prosecutor, on a temporary basis, the original versions of specific documents, should the Prosecutor indicate that such original versions are needed for evidentiary or forensic reasons. Requests for such original versions shall be communicated by the Prosecutor in writing to the Under-Secretary-General for Peacekeeping Operations and simultaneously copied to the Legal Counsel of the United Nations and to the Special Representative of the Secretary-General for Central African Republic. The United Nations undertakes to endeavour to accede to such requests whenever possible. It is nevertheless understood that the United Nations shall be free to decline any such request or to accede to it subject to such conditions, limitations, qualifications or exceptions as it might deem appropriate. It is further understood that the agreement of the United Nations to make available original versions of documents may only be given in writing, by the Under-Secretary-General for Peacekeeping Operations.

10. For the purposes of this article, documents are understood to include communications, notes and records in written form, including records of meetings and transcripts of audio- or video-taped conversations, facsimile transmissions, electronic mail, computer files and maps, whether generated by members of MINUSCA or received by MINUSCA from third parties.

11. References in this article to documents are to be understood to include other recorded forms of information, which may be in the form, *inter alia*, of audiotapes or digital audio files, including audiotapes or digital audio files of radio intercepts, video recordings, including video recordings of crime scenes and of statements by victims and potential witnesses, and photographs.

12. Without prejudice to article 4 of this MOU, it is understood that costs that are reimbursable by the Court in connection with assistance provided pursuant to this article shall include, *inter alia*:

(*a*) the costs of copying documents provided to the Prosecutor;

(*b*) the costs of transmitting those copies to the Prosecutor;

(*c*) costs incurred in, or necessarily incidental to, making available and transmitting to the Prosecutor original versions of documents pursuant to paragraph 9 of this article.

13. References in paragraphs 4, 5 and 9 of this article to the Under-Secretary-General for Peacekeeping Operations are to be understood to include the Assistant Secretary-General for Peacekeeping Operations.

14. References in this article to the Prosecutor are to be understood to include the Deputy Prosecutors and the Heads of Divisions.

15. The provisions of this article and Annex F shall apply *mutatis mutandis* with respect to requests submitted by the Registrar for the purposes of facilitating investigations pursuant to an order of a Chamber of the Court.

16. The Parties agree that defence counsel and counsel for victims as well as the members of their team in a case before the Court, where such persons are not staff/officials of the Court shall benefit from the possibilities of accessing documents and information held by MINUSCA on and subject to, *mutatis mutandis*, the terms and conditions set out in this article and Annex F. Such requests shall be submitted through the Registrar.

Article 10. Interview of members of MINUSCA

1. The United Nations undertakes to cooperate with the Prosecutor by taking such steps as are within its powers and capabilities to make available for interview by the Prosecutor members of MINUSCA whom there is good reason to believe may have information that is likely to be of assistance to the Prosecutor in the conduct of her or his investigations and that cannot reasonably be obtained by other means or from some other source. It is understood that, in the case of interviews conducted on the territory of Central African Republic, MINUSCA will only so cooperate with the prior written consent of the Government.

2. Requests by the Prosecutor to interview members of MINUSCA shall be communicated in writing to the Under-Secretary-General for Peacekeeping Operations and simultaneously copied to the Legal Counsel of the United Nations and to the Special Representative of the Secretary-General for Central African Republic.

3. Such requests shall identify the member of MINUSCA whom the Prosecutor wishes to interview, identify with a reasonable degree of specificity the category or categories of information that the Prosecutor believes that the member of MINUSCA concerned might be able to provide, explain succinctly how and why such information is relevant to the conduct of the Prosecutor's investigations and explain why that information cannot reasonably be obtained by other means or from some other source.

4. The Under-Secretary-General for Peacekeeping Operations shall respond to the Prosecutor in writing as soon as possible and in any event within 30 (thirty) days of the receipt of the request.

5. It is understood that police or military members of national contingents assigned to the police or military component of MINUSCA remain subject to the police or military rules, regulations and discipline of the State contributing the contingent to which they belong. The Prosecutor accordingly understands that, once she or he has obtained the response of the Under-Secretary-General for Peacekeeping Operations to a request to interview a police or military member of a national contingent assigned to MINUSCA's police or military component, she or he may need to approach the competent authorities of the State contributing the contingent to which that member of MINUSCA belongs with a view to arranging for him or her to be interviewed.

6. Whenever so requested by the Under-Secretary-General for Peacekeeping Operations, the Prosecutor shall accept the presence of a representative of the United Nations at and during the interview of a member of MINUSCA. The Under-Secretary-General for Peacekeeping Operations shall provide reasons in writing for any such request.

7. The Prosecutor shall, as soon as possible after the interview of a member of MINUSCA, provide both the Under-Secretary-General for Peacekeeping Operations and the member of MINUSCA concerned with a written transcript of the interview or the interview record.

8. It is understood that, unless otherwise expressly stated by the Under-Secretary-General for Peacekeeping Operations, members of MINUSCA who may be interviewed by the Prosecutor are not at liberty to disclose to the Prosecutor information the disclosure of which would:

(*a*) endanger the safety or security of any person;

(*b*) prejudice the security or proper conduct of any operation or activity of the United Nations or of its specialised agencies or related organizations or of its implementing partners or executing agencies;

(*c*) violate an obligation of confidentiality owed by the United Nations to a third party;

(*d*) violate or interfere with the privacy of a third person;

(*e*) undermine or compromise the free and independent decision-making processes of the United Nations;

(*f*) endanger the security of any Member State of the United Nations.

9. In the event that a member of MINUSCA who is interviewed by the Prosecutor discloses to the Prosecutor during the interview without specific authorization from the Under-Secretary-General for Peacekeeping Operations information of one or other of the kinds specified in the preceding paragraph, the Prosecutor, at the request of and in consultation with the Under-Secretary-General for Peacekeeping Operations, shall take the necessary measures to ensure the confidentiality of that information, to restrict its availability within her or his Office on a strictly "need to know" basis and, as necessary, to request that necessary measures be taken by the Court to prevent its onward disclosure. In the event that the Prosecutor her/himself has reason to believe that the member of MINUSCA concerned has disclosed such information during the interview, she or he shall immediately so notify the Under-Secretary-General for Peacekeeping Operations and, pending his or her response, shall take the necessary measures to ensure the confidentiality of that information.

10. It is understood that members of MINUSCA who may be interviewed by the Prosecutor are not at liberty to provide the Prosecutor with copies of any confidential documents of the United Nations that might be in their possession. It is further understood that, if the Prosecutor wishes to obtain copies of such documents, she or he should direct any request to that end to the Under-Secretary-General for Peacekeeping Operations in accordance with article 9, paragraph 2, of this MOU. At the same time, it is understood that, unless otherwise specified by the Under-Secretary-General for Peacekeeping Operations, members of MINUSCA are at liberty to refer to such documents and, subject to paragraph 8 of this article, to disclose their contents in the course of their interview.

11. The provisions of this article shall also apply with respect to the interview by the Prosecutor of:

(*a*) former members of MINUSCA;

(*b*) contractors engaged by the United Nations or by MINUSCA to perform services or to supply equipment, provisions, supplies, materials or other goods in support of MINUSCA's activities ("contractors");

(*c*) employees of such contractors ("employees of contractors").

12. The Court shall bear all costs incurred in connection with the interview of members of MINUSCA.

13. The provisions of this article shall not apply to cases in which the Prosecutor wishes to interview a member of MINUSCA who the Prosecutor has reason to believe may be criminally responsible for a crime within the jurisdiction of the Court.

14. References in paragraphs 4, 5, 6, 8 and 9 of this article to the Under-Secretary-General for Peacekeeping Operations are to be understood to include the Assistant Secretary-General for Peacekeeping Operations.

15. References in this article to the Prosecutor are to be understood to include the Deputy Prosecutors and the Heads of Divisions.

16. The provisions of this article and its related annexes shall apply *mutatis mutandis* with respect to requests submitted by the Registrar for the purposes of facilitating investigations pursuant to an order of a Chamber of the Court.

17. The Parties agree that defence counsel and counsel for victims as well as the members of their team in a case before the Court, where such persons are not staff/officials of the Court shall benefit from the possibilities of interviewing members of MINUSCA on and subject to, *mutatis mutandis*, the terms and conditions set out in this article. Such requests shall be submitted through the Registrar.

Article 11. Testimony of members of MINUSCA

1. Requests by the Prosecutor for the testimony of officials of the United Nations assigned to serve with MINUSCA are governed by article 16 of the Relationship Agreement. That article shall also apply *mutatis mutandis* with respect to requests by the Prosecutor for the testimony of other members of MINUSCA, including United Nations Volunteers, military observers, military liaison officers, UNPOL, experts performing missions for the United Nations and military members of national contingents assigned to serve with MINUSCA's military component.

2. Requests by the Prosecutor for the testimony of members of MINUSCA shall be communicated in writing to the Legal Counsel of the United Nations and shall be simultaneously copied to the Under-Secretary-General for Peacekeeping Operations and to the Special Representative of the Secretary-General for Central African Republic. The Legal Counsel of the United Nations or the Assistant Secretary-General for Legal Affairs shall respond to the Prosecutor in writing as soon as possible and in any event within 30 (thirty) days of the receipt of the request.

3. Requests shall identify the member of MINUSCA whom the Prosecutor wishes to testify, identify with a reasonable degree of specificity the matter or matters on which the Prosecutor wishes the member of MINUSCA concerned to testify, explain succinctly how and why such testimony is relevant to the Prosecutor's case and explain why testimony on the matter or matters concerned cannot reasonably be obtained from some other source.

4. It is understood that only the Legal Counsel of the United Nations or the Assistant Secretary-General for Legal Affairs may, on behalf of the Secretary-General, execute the waiver contemplated in article 16 of the Relationship Agreement in respect of a member of MINUSCA. It is further understood that any such waiver must be executed in writing.

5. It is understood that police or military members of national contingents assigned to the police or military component of MINUSCA remain subject to the police and military rules, regulations and discipline of the State contributing the contingent to which they belong. The Prosecutor accordingly understands that, once she or he has obtained the response of the Legal Counsel of the United Nations or of the Assistant Secretary-General for Legal Affairs to a request for the testimony of a police or military member of a national contingent assigned to MINUSCA's police or military component, she or he may need to approach the competent authorities of the State contributing the contingent to which that member of MINUSCA belongs with a view to arranging for his or her testimony.

6. The provisions of this article shall also apply with respect to the testimony of:

(*a*) former members of MINUSCA;

(*b*) contractors;

(*c*) employees of contractors.

7. The Court shall bear all costs incurred in connection with the testimony of members of MINUSCA.

8. The provisions of this article shall not apply to cases in which the Court seeks to exercise its jurisdiction over a member of MINUSCA who is alleged to be criminally responsible for a crime within the jurisdiction of the Court.

9. References in this article to the Prosecutor are to be understood to include the Deputy Prosecutors and the Heads of Divisions.

10. The provisions of this article and its related annexes shall apply *mutatis mutandis* with respect to requests submitted by the Registrar for the purposes of facilitating investigations pursuant to an order of a Chamber of the Court.

11. The Parties agree that defence counsel and counsel for victims as well as the members of their team in a case before the Court, where such persons are not staff/officials of the Court shall benefit from the possibilities of requesting testimony of members of MINUSCA through the Registrar on and subject to, *mutatis mutandis*, the terms and conditions set out in this article.

Article 12. Assistance in Tracing Witnesses

1. At the request of the Prosecutor and with the prior written consent of the Government, MINUSCA may assist the Prosecutor by taking such steps as may be within its powers and capabilities to identify, trace and locate witnesses or victims not members of MINUSCA whom the Prosecutor wishes to contact in the course of her or his investigations and who there is good reason to believe may be present in MINUSCA's areas of deployment. MINUSCA will consider such requests by the Prosecutor on a case-by-case basis, taking duly into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities and the risks to victims or

witnesses that may arise from any attempt by MINUSCA to identify, trace or locate them, as well as any attendant risks to their families, dependants or third parties.

2. The Prosecutor shall make requests for assistance under this article in writing. When making such requests, she or he shall provide MINUSCA in writing, with an evaluation of the risks of which she or he is aware that are likely to be attendant on any attempt to identify, trace or locate the victims or witnesses concerned. MINUSCA shall inform the Prosecutor in writing whether or not it accedes to a request as soon as possible and in any event within ten (10) working days of its receipt.

3. MINUSCA shall not be responsible for the safety or security of any witnesses or victims whom it may endeavour to identify and locate pursuant to this article, nor shall it be responsible for the safety or security of their families or dependants or of any third parties.

4. The provisions of this article shall apply *mutatis mutandis* with respect to requests submitted by the Registrar for the purposes of facilitating investigations pursuant to an order of a Chamber of the Court.

5. The Parties agree that defence counsel and counsel for victims as well as the members of their team in a case before the Court, where such persons are not staff/officials of the Court shall benefit from the possibilities of requesting assistance in tracing witnesses subject to, *mutatis mutandis*, the terms and conditions set out in this article. Such requests shall be submitted through the Registrar.

Article 13. Assistance in Respect of Interviews

1. At the request of the Prosecutor and with the prior written consent of the Government, MINUSCA may agree to allow the Prosecutor to conduct on MINUSCA premises interviews of witnesses who are not members of MINUSCA and who are voluntarily cooperating with the Prosecutor in the course of her or his investigations. MINUSCA will consider such requests by the Prosecutor on a case-by-case basis, taking duly into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities and the availability of suitable alternative locations for the conduct of such interviews.

2. The Prosecutor endeavours to make requests for assistance under this article in writing, wherever possible, preferably on a quarterly basis and in any event not less than 30 (thirty) days before the assistance is required. When making such requests, she or he shall explain in writing why the use of MINUSCA premises is being sought and shall provide MINUSCA in writing with an evaluation of the risks attendant on the interview of the witness concerned of which she or he may be aware. MINUSCA shall inform the Prosecutor in writing whether or not it accedes to a request as soon as possible and in any event within ten (10) working days of its receipt.

3. It shall be a condition to the interview of any witness on MINUSCA premises pursuant to this article that staff/officials of the Court accompany the witness throughout the time that he or she is present on MINUSCA premises.

4. Neither MINUSCA nor the United Nations shall be responsible for the security or safety of any staff/officials of the Court or of any witnesses while they are on MINUSCA premises for the purpose of the conduct of interviews pursuant to this article.

5. The provisions of this article shall apply *mutatis mutandis* with respect to requests submitted by the Registrar for the purposes of facilitating investigations pursuant to an order of a Chamber of the Court.

6. The Parties agree that defence counsel and counsel for victims as well as the members of their team in a case before the Court, where such persons are not staff/officials of the Court shall benefit from the possibility to conduct on MINUSCA premises, interviews of witnesses who are not members of MINUSCA and who are voluntarily cooperating with the Court subject to, *mutatis mutandis*, the terms and conditions set out in this article. Such requests shall be submitted through the Registrar.

Article 14. Assistance In the preservation of physical evidence

1. At the request of the Prosecutor and with the prior written consent of the Government, MINUSCA may assist the Prosecutor by storing items of physical evidence for a limited period of time in secure rooms, closets or safes on MINUSCA premises.

2. The Prosecutor shall make such requests in writing at least 60 (sixty) days before the service is required. In making such requests, the Prosecutor shall specify the items of physical evidence whose storage is sought, where their storage is sought and for how long. MINUSCA shall inform the Prosecutor in writing at least 30 (thirty) days before the service is required, whether or not it accedes to a request as soon as possible and in any event within 10 (ten) working days of its receipt. In the event that it accedes to a request, MINUSCA shall simultaneously inform the Prosecutor of the date on which storage can be provided, where and for how long.

3. Notwithstanding MINUSCA's previous accession to a request to store a particular item of evidence, MINUSCA may, at any time and upon giving reasonable notice in writing, require the Prosecutor to remove that item from its premises.

4. It is understood that the risk of damage to, or deterioration or loss of, items of physical evidence during their storage by MINUSCA shall lie with the Court. The Court hereby agrees to release the United Nations, including MINUSCA, and their officials, agents, servants and employees from any claim in respect of damage to, or deterioration or loss of, such items of physical evidence.

5. The provisions of this article shall apply *mutatis mutandis* with respect to requests submitted by the Registrar for the purposes of facilitating investigations pursuant to an order of a Chamber of the Court.

6. The Parties agree that defence counsel and counsel for victims as well as the members of their team in a case before the Court, where such persons are not staff/officials of the Court shall benefit from the possibility to be assisted in the preservation of physical evidence subject to, *mutatis mutandis*, the terms and conditions set out in this article. Such requests shall be submitted through the Registrar.

Article 15. Arrests, searches and seizures and securing of crime scenes

1. MINUSCA confirms to the Court that it is prepared, in principle and consistently with its mandate, to give consideration, on a case-by-case basis, to requests from the Government to assist the Government in:

(*a*) carrying out the arrest of persons whose arrest is sought by the Court;

(*b*) securing the appearance of a person whose appearance is sought by the Court;

(*c*) carrying out the search of premises and seizure of items whose search and seizure are sought by the Court;

it being understood that MINUSCA, if and when it accedes to such requests to assist the Government, does not in any way take over responsibilities that lie with the Government.

2. MINUSCA confirms to the Court that it is prepared, in principle and consistently with its mandate, to secure the scenes of possible crimes within the jurisdiction of the Court ("crime scenes") which it may encounter in the course of carrying out its mandate, pending the arrival of the relevant authorities of Central African Republic. MINUSCA shall notify the Prosecutor as soon as possible of the existence of any such crime scene. MINUSCA further confirms to the Court that it is prepared, in principle where consistent with its existing authorities and responsibilities, to give consideration to requests for assistance whether from the Prosecutor, or from the Government to assist the Government in securing and preserving the integrity of such crime scenes, pending arrival of staff/officials of the Office of the Prosecutor, thereafter, if requested by the Government or the Court. It is understood that, in the case of requests from the Court, MINUSCA will only so cooperate with the prior written consent of the Government.

Chapter IV: Security

Article 16. Security Arrangements

1. The provisions of this article are supplemental and additional to those of the MOU on Security Arrangements and shall be understood to be without prejudice to, and not to derogate in any manner from, its terms. The Special Representative of the Secretary-General for Central African Republic is the Designated Official for Central African Republic within the meaning of that expression as it appears in the Memorandum of Understanding.

2. At the request of the Court, MINUSCA shall, upon presentation of a valid form of identification, issue to staff/officials of the Court identity cards granting them access to MINUSCA facilities as official visitors for the duration of their mission in Central African Republic. The Court shall make such requests in writing, at least five (5) working days in advance of the arrival of the staff/officials concerned in Central African Republic.

3. MINUSCA shall permit staff/officials of the Court to attend security-related briefings provided by MINUSCA, as and when deemed appropriate by the Special Representative of the Secretary-General for Central African Republic.

4. MINUSCA shall, in case of emergency, provide temporary shelter within MINUSCA premises to staff/officials of the Court who present themselves at such premises and request protection, pending their emergency evacuation or relocation to another country, if necessary.

5. The Court shall instruct its staff/officials:

(*a*) to follow the security instructions and directives issued by or under the authority of the Special Representative of the Secretary-General for Central African Republic;

(*b*) to comply with operational directions or orders issued to them by members of MINUSCA while they are under their immediate protection;

(*c*) to comply at all times while they are on MINUSCA premises, are aboard MINUSCA vehicles, vessels or aircraft, or are under the immediate protection of members

of MINUSCA with all MINUSCA instructions, directives and policies regarding the care, carriage, display and use of firearms.

6. Staff/officials of the Court carrying firearms shall, upon entering MINUSCA premises or boarding any MINUSCA vehicle, vessel or aircraft, report to the senior MINUSCA security officer or other senior member of MINUSCA present that they are carrying firearms and shall, upon request, hand over the firearms to MINUSCA for the duration of their stay on such premises or journey on such vehicle, vessel or aircraft. It is understood that the risk of damage to or loss of such firearms during their storage by MINUSCA shall remain with the Court, unless such damage or loss results from the negligence of the United Nations or of MINUSCA officials, agents, servants and employees or any third party. Subject to this exception, the Court hereby agrees to release the United Nations, including MINUSCA, and their officials, agents, servants and employees from any claim in respect of such damage or loss.

7. MINUSCA undertakes to store such firearms in a secure place and to treat them with the same level of care as it applies to its own firearms of the same nature.

8. MINUSCA confirms to the Court that, subject to the security of its own members and assets, it is prepared to provide temporary shelter within MINUSCA premises to witnesses who are not members of MINUSCA and who are cooperating with the Court in the course of its investigations in the event that they come under imminent threat of physical violence and present themselves at such premises and request protection.

9. At the request of the Court, MINUSCA may undertake operations of a limited character to extract witnesses who are not members of MINUSCA and who are cooperating with the Court in the course of its investigations in the event that they come under imminent threat of physical violence. MINUSCA will review such requests on a case-by-case basis, taking into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities, the consistency of the proposed operation with its mandate and its Rules of Engagement or Directives on the Use of Force and the capacity of the Government to provide security for the witnesses concerned. MINUSCA shall inform the Court as soon as possible whether or not it accedes to its request.

10. Without prejudice to article 4 of this MOU, it is understood that the costs that are reimbursable by the Court in connection with support provided pursuant to the preceding paragraph shall include, *inter alia*, the cost of fuel consumed by United Nations or contingent owned vehicles, vessels or aircraft and of any helicopter or aircraft flying hours.

11. Paragraph 4 of the present article applies *mutatis mutandis* to defence counsel and counsel for victims as well as the members of their team in a case before the Court, where such persons are not staff/officials of the Court. Such requests shall be submitted through the Registrar who will advise such persons that the form of assistance envisaged in this paragraph is subject to provisions of paragraph 5 of this article.

Chapter V: Implementation

Article 17. Payments

1. MINUSCA shall submit invoices to the Court for the provision of services, facilities, cooperation, assistance and support under this MOU. It shall do so promptly and, in any event, within 60 (sixty) days of the date on which the services, facilities, cooperation, assistance or support concerned was provided.

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, by means of bank transfer made payable to the United Nations bank account specified on the invoice concerned.

Article 18. Communications

1. MINUSCA and the Registrar and the Prosecutor shall each designate official contact persons responsible:

(*a*) for making, receiving and responding to requests under articles 5, 6, 7, 8,12, 13, 14 and 16 of this MOU for administrative and logistical services, medical services, transportation, police and military support, assistance in tracing witnesses, assistance in respect of interviews, assistance in the preservation of physical evidence, the issuance of identity cards and the extraction of witnesses;

(*b*) for transmitting and receiving medical release forms under article 6, paragraph 3, of this MOU;

(*c*) for submitting and receiving invoices and for making and receiving payments under article 17 of this MOU.

These designated official contact persons shall be the exclusive channels of communication on these matters between MINUSCA and the Court.

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, MINUSCA, the Registrar and the Prosecutor 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, it being understood that the Registry and the Prosecutor, may nevertheless share such requests with the Chambers on a strictly confidential and *ex parte* basis, should this become necessary, in which event the Registrar or the Prosecutor shall immediately inform the United Nations in writing by means of a communication addressed to the Legal Counsel. The Parties 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 19. Consent of the Government

It shall be the responsibility of the Court to obtain the prior written consent of the Government, as provided for in article 5 paragraph 1(*b*) and (*e*), article 7, paragraphs 4 and 6, article 8, article 10, paragraph 1, article 12, paragraph 1, article 13, paragraph 1, article 14, paragraph 1 and article 15, paragraph 2.

Article 20. Planning

The Registrar and the Prosecutor shall each regularly prepare and submit to MINUSCA a rolling work plan for the three months ahead, indicating the nature and

scope of the services, facilities, cooperation, assistance and support that she or he anticipates requesting from MINUSCA pursuant to articles 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of this MOU, as well as the size, timing, location and duration of each of the missions that it anticipates sending to Central African Republic during that time.

Article 21. 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 or in connection with the implementation of this MOU shall be settled by consultations between the Deputy Prosecutor or the relevant Director within the Registry, as applicable and the Assistant-Secretary-General for Peacekeeping Operations. If such differences are not settled by such consultations, they shall be referred to the Prosecutor or the Registrar, as applicable, and to the Under-Secretary-General for Peacekeeping Operations for resolution.

Article 22. 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 other 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 MINUSCA, 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 Office of the Prosecutor, witnesses, victims, suspects and accused, convicted or sentenced persons or any other third parties, based on, arising 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 United Nations, including MINUSCA, or their officials, agents, servants or employees.

Chapter VI: Miscellaneous and final provisions

Article 23. Assistance to MINUSCA

This MOU does not apply in respect of any activities that the Prosecutor might undertake, at the request of the Special Representative of the Secretary-General for Central

African Republic, in order to assist MINUSCA in conducting its own investigations into a particular matter or incident. The terms on which any such assistance is given shall be the subject of separate arrangements between the Prosecutor and MINUSCA.

Article 24. Final Provisions

1. This MOU shall enter into force on the date on which it is signed by the Parties. This MOU shall remain in force indefinitely, notwithstanding the eventual termination of MINUSCA's mandate.

2. This MOU may only be modified or amended by written agreement between the Parties.

3. The Annexes to this MOU are an integral part of this MOU.

In witness whereof, the duly authorized representatives of the Parties have affixed their signatures.

For and on behalf of the United Nations	For and on behalf of the Court
[*Signed*] Herve Ladsous Under-Secretary-General for Peacekeeping Operations Date: 5 May 2016	[*Signed*] Fatou Bensouda Prosecutor Date: 19 May 2016
[*Signed*] Atul Khare Under-Secretary-General for Field Support Date: 3 May 2016	[*Signed*] Herman von Hebel Registrar Date: 18 May 2016

(*d*) Agreement between the United Nations and the Kingdom of the Netherlands concerning the Office of the Organization for the Prohibition of Chemical Weapons (OPCW)—United Nations Joint Investigative Mechanism. The Hague, 31 May 2016*

Whereas the Security Council of the United Nations acting under Chapter VII of the Charter of the United Nations decided by its resolution 2235 (2015) adopted on 7 August 2015 to establish the OPCW-United Nations Joint Investigative Mechanism (JIM) "to identify to the greatest extent feasible individuals, entities, groups, or governments who were perpetrators, organisers, sponsors or otherwise involved in the use of chemicals as weapons, including chlorine or any other toxic chemical, in the Syrian Arab Republic where the OPCW Fact-Finding Mission determines or has determined that a specific incident in the

* Entered into force 31 May 2016 by signature, in accordance with paragraph 37. United Nations registration no. I-53729.

Syrian Arab Republic involved or likely involved the use of chemicals as weapons, including chlorine or any other toxic chemical";

Whereas the JIM wishes to establish an office in The Hague, the Kingdom of the Netherlands to facilitate the implementation of its mandate and in particular liaison with the OPCW and its Fact Finding Mission;

Whereas the Kingdom of the Netherlands wishes to facilitate the work of the JIM in this regard;

Whereas the United Nations and the Kingdom of the Netherlands wish to conclude an agreement for the establishment of the office of the JIM in the Kingdom of the Netherlands (the "Office");

The United Nations and the Kingdom of the Netherlands have agreed as follows:

Part I. General provisions

Article 1. Use of terms

For the purpose of this Agreement:

(*a*) "JIM" means the Joint Investigative Mechanism established by the United Nations Security Council in its resolution 2235 (2015) of 7 August 2015;

(*b*) "OPCW" means the Organization for the Prohibition of Chemical Weapons;

(*c*) "premises" means buildings, parts of buildings and areas, including installations and facilities made available to, maintained, occupied or used by the JIM in the host State in consultation with the host State, in connection with its functions and purposes;

(*d*) The "Head of the JIM" means the person appointed by the Secretary-General to lead the JIM;

(*e*) "Office" means the Investigations Office of the JIM in The Hague;

(*f*) The "Head of the Office" means the person appointed by the Secretary-General to head the Office;

(*g*) "officials of the JIM" means the Head of the JIM and staff who are assigned by the Secretary-General to serve as part of the JIM;

(*h*) "officials of the Office" means the Head of the Office and staff of the JIM who are assigned by the Secretary-General to the Office;

(*i*) "experts on mission for the JIM" means those persons, other than officials of the JIM, who perform missions for the JIM;

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

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

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

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

(*n*) "General Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which the Kingdom of the Netherlands acceded on 19 April 1948;

(*o*) "Vienna Convention" means the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961, to which the Kingdom of the Netherlands acceded on 7 September 1984; and

(*p*) "Secretary-General" means the Secretary-General of the United Nations.

Article 2. Establishment of the Office

1. The JIM shall establish an Office in The Hague, the Kingdom of Netherlands, to carry out the functions in accordance with the mandate of the JIM set out in United Nations Security Council resolution 2235 (2015) of 7 August 2015 and any subsequent decision or resolution of the United Nations relevant to, and relating specifically to, the JIM.

2. The seat of the Office shall be located within the premises of the headquarters of the OPCW in The Hague. This Agreement shall be without prejudice to the 1997 Agreement between the OPCW and the Kingdom of Netherlands concerning the Headquarters of the OPCW, done at The Hague on 22 May 1997.

Article 3. Purpose and scope of this Agreement

This Agreement shall regulate the status of the Office, its premises, officials of the JIM and experts on mission in the host State. It shall, *inter alia*, create conditions conducive to the stability and independence of the Office and facilitate its smooth and efficient functioning.

Part II. Status of the office

Article 4. Juridical personality

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

(*a*) to contract;

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

(*c*) to institute legal proceedings.

2. For the purposes of this article, the JIM shall be represented by the Head of the JIM.

Article 5. Privileges, immunities and facilities

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

2. The General Convention shall apply to the JIM and the archives of the JIM. Furthermore, the JIM shall enjoy the privileges, immunities and facilities set out in this Agreement.

Article 6. Inviolability of the premises

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

2. The competent authorities shall not enter the premises to perform any official duty, except with the express consent, or at the request of the Head of the Office, or an official designated by him or her. Judicial actions and the service or execution of legal process,

including the seizure of private property, cannot be enforced on the premises except with the consent of, and in accordance with conditions approved by, the Head of the Office, or an official designated by him or her.

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

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

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

Article 7. Protection of the premises and their vicinity

1. The competent authorities of the host State shall exercise due diligence to ensure that the security and tranquility of the premises are not impaired by any person or group(s) of persons attempting unauthorized entry into or unto the premises or creating disturbances in the immediate vicinity. As may be required for this purpose, the host State shall provide adequate police protection on the boundaries and in the vicinity of the premises.

2. If so requested by the Head of the Office, or an official designated by him or her, the competent authorities shall, in consultation with the Head of the Office, or an official designated by him or her, to the extent it is deemed necessary by the competent authorities, provide adequate protection, including police protection, for the preservation of law and order on the premises and for the removal of persons therefrom.

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

Article 8. Law and authority on the premises

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

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

3. The JIM shall apply United Nations rules and regulations as are necessary for the carrying out of its functions. No laws or regulations of the host State which are inconsistent with the rules and regulations of the United Nations under this paragraph shall, to the extent of such inconsistency, be applicable on the premises.

4. Any dispute between the JIM and the host State as to whether a rule or regulation of the United Nations comes within the ambit of this article or as to whether a law or regulation of the host State is inconsistent with a rule or regulation of the United Nations under this article shall promptly be settled by the procedure under article 32 of this Agreement. Pending such settlement, the rule or regulation that is the subject of the dispute shall apply and the law or regulation of the host State shall be inapplicable on the premises to the extent that the Office claims it to be inconsistent with the rule or regulation in question.

Article 9. Public services for the premises

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

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

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

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

Article 10. Flags, emblems and markings

The JIM shall be entitled to display the United Nations' flags, emblems and markings on its premises and to display its flag on vehicles used for official purposes.

Article 11. Funds, assets and other property

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

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

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

Article 12. Inviolability of archives, documents and materials

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

Article 13. Facilities in respect of communications

1. The JIM shall have the right to operate all appropriate means of communication, including electronic means of communication, and shall have the right to use codes or

ciphers for its official communications and correspondence. The official communications and correspondence of the JIM shall be inviolable.

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

3. No censorship shall be applied to the official communications or correspondence of the JIM. Such immunity from censorship shall extend to printed matter, photographic and electronic data communications and other forms of communication as may be used by the JIM. The JIM shall have the right to operate radio, satellite and other telecommunication equipment on the United Nations-registered frequencies or frequencies allocated to it by the host State in accordance with its national procedures. The host State shall endeavour to allocate to the JIM, to the extent possible, frequencies for which it has applied.

Article 14. Freedom of financial assets from restrictions

Without being restricted by financial controls, regulations, notification requirements in respect of financial transactions, or moratoria of any kind, the JIM:

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

(*b*) shall be free to transfer its funds, gold or currency from one country to another, or within the host State; and

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

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

1. Within the scope of its official functions, the JIM, its assets, income and other property shall be exempt from:

(*a*) all direct taxes, whether levied by national, provincial or local authorities, which includes, *inter alia*, corporation tax;

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

(*c*) motor vehicle taxes (*motorrijtuigenbelasting*);

(*d*) taxes on passenger motor vehicles and motorcycles (*belasting van personenauto's en motorrijwielen*);

(*e*) value added taxes (*omzetbelasting*) paid on goods and services supplied on a recurring basis or involving considerable expenditure;

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

(*g*) real property transfer taxes (*overdrachtsbelasting*);

(*h*) insurance taxes (*assurantiebelasting*);

(*i*) energy taxes (*regulerende energiebelasting*);

(*j*) taxes on mains water (*belasting op leidingwater*); and

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

2. The exemptions provided for in paragraph 1, subparagraphs (*e*) through (*k*), of this article may be granted by way of a refund. These exemptions shall be applied in accordance with the formal requirements of the host State. These requirements, however, shall not affect the general principles laid down in paragraph 1 of this article.

3. Goods acquired or imported under the terms set out in paragraph 1 of this article shall not be sold, let out, given away or otherwise disposed of in the host State, except in accordance with conditions agreed upon with the host State.

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

Article 16. Exemption from import and export restrictions

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

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

Article 17. Privileges, immunities and facilities of the Head of the Office

1. The Head of the Office, together with members of his or her family forming part of the household who are not nationals or permanent residents of the host State, shall enjoy the privileges, immunities, exemptions and facilities accorded to heads of diplomatic missions in accordance with international law and in particular under the General Convention and the provisions of the Vienna Convention. He or she shall, *inter alia*, enjoy:

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

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

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

(*d*) immunity from national service obligations;

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

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

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

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

(*i*) the right to import free of duties and taxes, except payments for services their furniture and effects at the time of first taking up their post in the host State, and to re-export their furniture and effects free of duties and taxes to their country of destination upon separation from the JIM;

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

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

2. The Head of the Office shall continue to be accorded immunity from legal process of every kind in respect of words which were spoken or written and all acts which were performed in his or her official capacity even after he or she ceased to perform his or her functions for the JIM.

3. With respect to the inheritance and gift tax, which depends upon residence, periods during which the Head of the Office is present in the host State for the discharge of his or her functions shall not be considered as periods of residence.

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

5. Persons referred to in this article who are nationals or permanent residents of the host State shall enjoy only the privileges, immunities and facilities under article V, section 18 and article VII of the General Convention, together with the following modifications and supplementary provisions:

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

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

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

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

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

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

6. Persons referred to in paragraph 5 of this article shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the JIM.

Article 18. Privileges, immunities and facilities of the other officials of the Office

1. Officials of the Office shall enjoy such privileges, immunities and facilities as are necessary for the independent performance of their functions. They shall enjoy privileges and immunities accorded to officials of the United Nations under articles V and VII of the General Convention, including as modified and supplemented below:

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

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

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

(*d*) immunity from national service obligations;

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

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

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

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

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

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

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

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

4. With respect to the inheritance and gift tax, which depends upon residence, periods during which the official is present in the host State for the discharge of his or her functions shall not be considered as periods of residence.

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

6. Persons referred to in this article who are nationals or permanent residents of the host State shall enjoy only the privileges, immunities and facilities under article V, section 18, and article VII of the General Convention, including as modified and supplemented below:

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

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

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

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

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

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

Article 19. Experts on mission for the JIM

1. Experts on mission for the JIM shall enjoy the privileges and immunities, exemptions and facilities as are necessary for the independent performance of their functions for the JIM, and in particular, shall enjoy the privileges and immunities, exemptions and facilities under articles VI and VII of the General Convention.

2. Experts on mission for the JIM shall be provided by the Head of the JIM with a document certifying that they are performing functions for the JIM and specifying a time period for which their functions will last. This certificate shall be withdrawn prior to its expiry if the expert on mission for the JIM is no longer performing functions for the JIM, or if the presence of the expert on mission for the JIM at the seat of the Office is no longer required.

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

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

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

3. In case of the insolvency of a person aged under 18 with respect to a claim arising out of gainful employment of that person, the Office shall seek to ensure that the official of the Office of whose family the person concerned is a member, meets their private legal obligations that arise in this connection, and where necessary, the Secretary-General shall give prompt attention to a request for a waiver in this regard.

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

Article 21. Interns

1. The Ministry of Foreign Affairs shall register interns for a maximum period of six (6) months, provided that the JIM supplies the Ministry of Foreign Affairs with a declaration signed by them, accompanied by adequate proof, to the effect that:

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

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

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

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

(*e*) the intern shall leave the host State within fifteen (15) days after the end of the internship.

2. In exceptional circumstances the maximum period of six (6) months mentioned in paragraph 1 of this article, may be extended once by a maximum period of six (6) months. However, the total period of the internship shall not exceed one (1) year.

3. Interns shall not enjoy privileges, immunities and facilities within the host State, except:

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

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

Part IV. Waiver of privileges, immunities, and facilities

Article 22. Waiver of privileges, immunities and facilities

1. The privileges, immunities and facilities provided for in articles 17, 18 and 19, of this Agreement are granted in the interests of the JIM and not for the personal benefit of the individuals themselves.

2. The Secretary-General shall have the right and duty to waive the immunity granted under this Agreement of any person in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the JIM.

Part V. Cooperation between the office and the host state

Section 1: General

Article 23. General cooperation between the JIM and the host State

1. Whenever this Agreement imposes obligations on the competent authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government of the host State.

2. The host State shall promptly inform the JIM of the office designated to serve as the official contact point and to be primarily responsible for all matters in relation to this Agreement, as well as of any subsequent changes in this regard.

3. The Head of the Office, or an official designated by him or her, shall serve as the official contact point for the host State and shall be primarily responsible for all matters in relation to this Agreement. The host State shall be informed promptly about this designation and of any subsequent changes in this regard.

Article 24. Cooperation with the competent authorities

1. The JIM shall cooperate at all times with the competent authorities to facilitate the proper administration of justice and the enforcement of the laws of the host State, to secure the observance of police regulations and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.

2. The JIM and the host State shall cooperate on security matters, taking into account the public order and national security interests of the host State.

3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons enjoying such privileges, immunities and facilities to respect the laws and regulations of the host State and not to interfere in the internal affairs of the host State.

4. The JIM shall cooperate with the competent authorities responsible for health, safety at work, electronic communications and fire prevention.

5. The JIM shall observe all security directives as agreed with the host State, as well as all directives of the competent authorities responsible for fire prevention regulations.

Article 25. Notification and Identification Cards

1. The Head of the Office, or an official designated by him or her, shall promptly notify the host State of:

(*a*) the appointment of officials of the Office, the date of their arrival or commencement of their functions and their final date of departure or termination of their functions with the Office;

(*b*) the arrival and final departure date of members of their family forming part of the household of the persons referred to in subparagraph 1(*a*) of this article and, where appropriate, the fact that a person has ceased to form part of the household; and

(*c*) the arrival and final departure date of private or domestic servants of persons referred to in subparagraph 1(*a*) of this article and, where appropriate, the fact that they are leaving the employ of such persons.

2. The host State shall issue to the officials of the Office and to members of their family forming part of the household and to their private or domestic servants an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to the competent authorities.

3. At the final departure of the persons referred to in paragraph 2 of this article or when these persons have ceased to perform their functions for the Office, the identity card referred to in paragraph 2 of this article shall be promptly returned by the Office to the Ministry of Foreign Affairs.

Article 26. Social security regime

1. The social security systems of the United Nations offer coverage comparable to the coverage under the legislation of the host State. Accordingly, officials of the Office to whom the aforementioned scheme applies shall be exempt from the social security provisions of the host State. Consequently, officials of the Office shall not be covered against the risks described in the social security provisions of the host State.

2. The provisions of paragraph 1 of this article shall apply *mutatis mutandis*, to the members of the family forming part of the household of the persons referred to in paragraph 1 of this article unless they are employed in the Kingdom of the Netherlands by an employer other than the United Nations or receive Netherlands social security benefit.

SECTION 2: VISAS, PERMITS AND OTHER DOCUMENTS

Article 27. Visas for officials of the Office and experts on mission for the JIM

1. Officials of the Office and experts on mission for the JIM, as notified as such by the Head of the Office, or an official designated by him or her to the host State, shall have the right of unimpeded entry into, exit from and movement within the host State, including unimpeded access to the premises of the Office.

2. Visas, where required, shall be granted free of charge and as promptly as possible.

3. Applications for visas from members of their family forming part of the household of the officials of the Office, where required, shall be processed by the host State as promptly as possible and granted free of charge.

Article 28. Laissez-passer and United Nations Certificate

1. The host State shall recognize and accept the United Nations *laissez-passer* as a valid travel document. Where applicable, the host State further agrees to issue any required visas in the United Nations *laissez-passer*.

2. The host State shall recognize and accept in accordance with the provisions of Section 26 of the General Convention the United Nations certificate issued to persons travelling on the business of the JIM.

3. Holders of a *laissez-passer* or a certificate indicating that they are travelling on the business of the JIM shall be granted facilities for speedy travel.

Article 29. Driving licence

1. During their period of employment with the Office, officials of the Office, as well as members of their family forming part of the household and their private servants, shall be allowed to obtain from the host State a driving licence on presentation of their valid foreign driving licence or to continue to drive using their own valid foreign driving licence, provided they are in possession of an identity card issued by the host State in accordance with article 25 of this Agreement.

2. During the period of their assignment, any person issued an identity card by the host State shall be allowed to continue to drive using their own valid foreign driving licence.

Section 3: Security, operational assistance

Article 30. Security, safety and protection of persons referred to in this Agreement

1. Without prejudice to the privileges, immunities and facilities granted under this Agreement, the competent authorities shall take effective and adequate action which may be required to ensure the security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the JIM, free from interference of any kind.

2. The JIM shall cooperate with the competent authorities with a view to facilitating the observance by all persons referred to in this Agreement of the directives necessary for their security and safety, as given to them by the competent authorities.

3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons referred to in this Agreement to observe the directives necessary for their security and safety, as given to them by the competent authorities.

Part VI. Final provisions

Article 31. Supplementary arrangements and agreements

The JIM and the host State may, for the purpose of implementing this Agreement or of addressing matters not foreseen in this Agreement, make supplementary arrangements and agreements as appropriate.

Article 32. Settlement of disputes with third parties

The JIM shall make provisions for appropriate modes of settlement of:

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

(*b*) disputes involving any person referred to in this Agreement who, by reason of his or her official position or function in connection with the JIM, enjoys immunity, if such immunity has not been waived by the Secretary-General.

Article 33. Settlement of differences on the interpretation or application of this Agreement or supplementary arrangements or agreements

1. All differences arising out of the interpretation or application of this Agreement or supplementary arrangements or agreements between the Parties shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 of this article within three months following a written request by one of the Parties to the difference, it shall, at the request of either Party, be referred to 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 (15) days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint 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 34. Application

This Agreement shall apply to the part of the Kingdom of the Netherlands in Europe only.

Article 35. Amendments and termination

1. This Agreement may be amended by mutual written consent of the Parties.

2. This Agreement shall be reviewed at the request of either Party.

3. This Agreement shall cease to be in force by mutual consent of the Parties, if the Office is removed from the territory of the host State or upon completion of the JIM's mandate, except for such provisions as may be applicable in connection with the orderly termination of the operations of the JIM the host State and the disposition of its property therein, as well as provisions granting immunity from legal process of every kind in respect of words spoken or written or all acts performed in an official capacity under this Agreement.

Article 36. Interpretation of agreements

The provisions of this Agreement shall be complementary to the provisions of the General Convention and the Vienna Convention, the latter Convention only insofar as it is relevant for the diplomatic privileges, immunities and facilities accorded to the appropriate categories of persons referred to in this Agreement. Insofar as any provision of this Agreement and any provisions of the General Convention and the Vienna Convention relate to the same subject matter, each of these provisions shall be applicable and neither shall narrow the effect of the other.

Article 37. Entry into force

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

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

Done at The Hague, The Netherlands, on the 31st day of May in the year Two Thousand and Sixteen, in duplicate, in the English language.

For the United Nations	For the Kingdom of the Netherlands
[*Signed*]	[*Signed*]

(*e*) Agreement between the Government of the Republic of Korea and the United Nations regarding the United Nations Project Office on Governance. New York, 2 June 2016*

Whereas, the Government of the Republic of Korea (hereinafter referred to as "the Government") and the United Nations, represented by the Department of Economic and Social Affairs (hereinafter referred to as the "United Nations" and, collectively, as the "Parties"), having recognized that participatory and transparent governance and public administration play a key role in achieving the objectives of the United Nations;

Whereas, the Parties have agreed to cooperate on the implementation of the "Project on the United Nations Project Office on Governance" (hereinafter referred to as the "Project");

Whereas, the Government has agreed to provide the facilities and funds necessary for carrying out the Project;

Whereas, the Government and the United Nations had concluded a Trust Fund Agreement on 23 June 2006 to establish a trust fund to support the implementation of the Project;

Whereas, there is a necessity to enhance governance and public administration capacity for achieving the 2030 Agenda for Sustainable Development, which was adopted at the United Nations Sustainable Development Summit 2015 and marked an important milestone in international cooperation for development over the next 15 years, in view of which the Parties have agreed to continue the operation of the United Nations Project Office on Governance (hereinafter referred to as "the Office") and assume its second phase of work in line with the 2030 Agenda for Sustainable Development;

Whereas, the Parties have agreed that this Agreement shall constitute an agreement concerning the establishment of the Office in accordance with article 7.2 of the Trust Fund Agreement;

Now therefore, the Parties hereby agree as follows:

Article 1. Definition

The term "Office" means the United Nations Project Office on Governance which was established by the United Nations Department of Social Affairs (UNDESA) as part of the United Nations presence in the Republic of Korea in accordance with article 1.1 of the Trust Fund Agreement.

Article 2. Objective and Functions

1. The objective of the Office is to strengthen public institution and governance in order to advance the implementation of the 2030 Agenda for Sustainable Development through knowledge sharing, exchange of lessons learned and best practices, research and multilateral cooperation, by implementing the programme of activities described in this Agreement.

2. The Office shall perform the following functions:

* Entered into force on 12 July 2016, in accordance with article 20. United Nations registration no. I-53805.

(*a*) Conducting research on promoting transparent, inclusive and accountable public services for sustainable development equipped to support the implementation of the Sustainable Development Goals;

(*b*) Carrying out research on government innovation and new government paradigms to address development challenges and improve well-being of all people;

(*c*) Promoting and supporting e-government development in developing countries;

(*d*) Networking with government officials, academia and civil society in Member States in the area addressed by the Office;

(*e*) Building partnerships with other international and regional organizations, domestic institutions and think tanks to develop and implement cooperative projects;

(*f*) Holding and supporting regional and international meetings in the fields of governance and public administration to enhance governance capacity of Member States;

(*g*) Subordinate duties, including publication of materials related to the activities set out in subparagraphs (*a*) to (*f*); and

(*h*) Other related duties as agreed between the Parties.

Article 3. Legal Capacity

The United Nations, acting through the Office, shall possess juridical personality and shall have the capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes, in particular:

(*a*) To enter into agreements and contracts;

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

(*c*) 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 the Office") and shall be comprised of other United Nations staff. Both the Head of the Office and all other United Nations staff shall be 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 the 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 finance the programme of activities to be conducted by the Office in accordance with the Technical Cooperation Trust Fund Agreement between the Government of the Republic of Korea and the United Nations concluded on 23 June 2006, as amended.

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 the 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 the 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 the 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 the 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 favorable 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. Intellectual property rights, including but not limited to patent rights, copyrights and other similar intellectual property rights, in any works generated or acquired by or through the Office in the Republic of Korea shall be the exclusive property of the United Nations. It is, however, understood that the Office shall observe the law 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 the 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 fluids 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 the Member States 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, traveling 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 the 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. The persons referred to in article 15 shall hold personal identity cards (hereinafter referred to as "IDs") issued by the Office which are equivalent to the 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 the 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;

(*c*) Immunity from seizure of their official baggage, except in doubtful cases, granted only to representatives of the Member States and experts on mission;

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

(*e*) 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;

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

(*g*) The right to import free of duty their furniture and 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.

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

3. 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 tight 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

The Parties shall endeavour to settle amicably any dispute between the Parties concerning the interpretation or application of this Agreement, or otherwise settle such dispute in accordance with internationally recognized modes of settlement as mutually agreed and subject to article VIII of the Convention.

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. Without prejudice to the privileges and immunities referred to in this Agreement, 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 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 the 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 the Office, the matter shall be determined in accordance with the procedures set out in article 18.

Article 20. General Provisions

1. 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.

2. 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.

3. 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.

4. 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 in New York City, this 2nd day of June 2016, in the English language.

[*Signed*] Mr. Wu Hongbo	[*Signed*] H.E. Mr. Yun-sik Hong
Under-Secretary-General for Economic and Social Affairs	Minister of the Interior
For the United Nations	For the Government of the Republic of Korea

(*f*) Agreement between the United Nations and the Government of the Republic of Colombia concerning the Status of the United Nations Mission in Colombia. New York, 15 September 2016*

I. Definitions

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

(*a*) "the Mission" means the United Nations Mission in Colombia, established in accordance with Security Council resolution 2261 (2016) of 25 January 2016;

(*b*) "Special Representative" means the Special Representative of the Secretary-General and Head of the United Nations Mission in Colombia appointed by the Secretary-General of the United Nations. Any reference to the Special Representative in this Agreement shall, except in paragraph 23, include any member of the Mission to whom he or she delegates a specified function or authority. It shall also include, including in paragraph 23, any member of the Mission whom the Secretary-General may designate as acting Head of Mission of the Mission following the death or resignation of the Special Representative;

(*c*) "member of the Mission" means:

(i) the Special Representative;

* Entered into force on 15 September 2016 by signature, in accordance with article XI. United Nations registration no. I-53926.

(ii) officials of the United Nations assigned to serve with the Mission;

(iii) United Nations Volunteers recruited through the United Nations Volunteer programme assigned to serve with the Mission;

(iv) unarmed international observers assigned to serve with the Mission pursuant to Security Council resolution 2261 (2016);

(v) other persons assigned to perform missions for the Mission and who fall within the scope of article VI of the Convention.

(*d*) "the Government" means the Government of the Republic of Colombia;

(*e*) "the territory" means the territory of the Republic of Colombia;

(*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 Colombia is a Party;

(*g*) "contractors" means persons, other than members of the Mission, engaged by the United Nations, including juridical as well as natural persons and their employees and sub-contractors, to perform services for the Mission or to supply equipment, provisions, supplies, fuel, materials or other goods, including spare parts and means of transport, in support of the Mission activities. Exemptions and facilities that are to be accorded with respect to the provision of such services and the supply of such goods must be solicited by the Mission. Such contractors shall not be considered beneficiaries of the present Agreement;

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

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

(*j*) "vessels" means maritime or riverine vessels of the United Nations and operated by members of the Mission or contractors in support of the Mission activities;

(*k*) "Standard Basic Assistance Agreement" means the Agreement between the Government of Colombia and the United Nations Development Programme concerning assistance by the United Nations Development Programme to the Government of Colombia, which was signed on 29 May 1974 and entered into force on 23 January 1975.

II. Application of the present Agreement

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

III. Application of the Convention

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

IV. Status of the Mission

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

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

United Nations flag, markings and identification

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

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

Communications

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

9. Subject to the provisions of paragraph 8:

(*a*) the Mission shall have the right to install and to operate radio sending, receiving and repeater stations, as well as satellite systems, in order to connect appropriate points within the territory of Colombia 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 the Mission with the Government, the Government shall immediately allocate suitable frequencies to the Mission for this purpose. The Mission shall be exempt from any, and all taxes on the allocation of frequencies for this purpose, as well as from any and all taxes on, and all fees for, their use. However, the Mission will not claim exemption from fees which are in fact no more than charges for services rendered;

(*b*) the Mission shall enjoy, within the territory of Colombia, 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 the Mission, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio may operate and the areas of land on which sending, receiving and repeater stations may be erected shall be decided upon in cooperation with the Government. If no decision has been reached fifteen (15) working days after the matter has been raised by the Mission with the

Government, the Government shall immediately allocate suitable frequencies or land, as the case may be, to the Mission for these purposes. The Mission shall be exempt from any and all taxes on the allocation of frequencies for this purpose, as well as from any and all taxes on, and any and all fees for, their use. However, the Mission will not claim exemption from fees which are in fact no more than charges for services rendered. Connections with local telephone and electronic data systems may be made only after consultation and in accordance with arrangements made with the Government;

(*c*) the Mission shall have the right to disseminate to the public in Colombia and to the public abroad information relating to its mandate through electronic media, including websites, social media, webcasts, data feeds and online and messaging services. The content of data disseminated through such media shall be under the exclusive editorial control of the Mission and shall not be subject to any form of censorship. The Mission shall be exempt from any prohibitions or restrictions regarding the production or dissemination of such data, including any requirement that permits be obtained or issued for such purposes;

(*d*) the Mission shall have the right to disseminate to the public in Colombia information relating to its mandate through official printed materials and publications, which the Mission may produce itself or through private publishing companies in Colombia. The content of such materials and publications shall be under the exclusive editorial control of the Mission and shall not be subject to any form of censorship. The Mission 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 Colombia which the Mission may use for the production, publication or dissemination of such materials or publications;

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

Travel and transport

10. The Mission, its members and contractors, together with their property, equipment, provisions, supplies, fuel, materials and other goods, including spare parts, as well as vehicles and aircraft, including the vehicles and aircraft of contractors used exclusively in the performance of services for the Mission, shall enjoy full freedom of movement without delay throughout Colombia by the most direct route possible for the purpose of executing the tasks defined in the Mission's mandate and without the need for travel permits or prior authorization or notification, except in the case of movements by air, which shall comply with the generally applicable procedural requirements for flight planning and operations within the airspace of Colombia as promulgated, and as specifically notified to the Mission, by the civil aviation authority of Colombia. The Government shall, where necessary, provide the Mission with maps and other information, where available, including maps of and information on the

location of minefields and other dangers and impediments, which may be useful in facilitating the Mission's movements and ensuring the safety and security of its members.

11. Vehicles, aircraft, and vessels shall not be subject to registration or licensing by the Government, it being understood that copies of all relevant certificates issued by appropriate authorities in other States in respect of aircraft shall be provided by the Mission to the civil aviation authority of Colombia and that all vehicles, vessels and aircraft shall carry third party insurance. The Mission shall provide the Government, from time to time, with updated lists of the Mission vehicles.

12. The Mission and its members and contractors, as well as vehicles, aircraft, and vessels, including vehicles, aircraft and vessels of its contractors used exclusively in the performance of services for the Mission, may use roads, bridges, ferries, waterways, airfields, airspace and port facilities without the payment of any form of monetary contributions, dues, tolls, user fees or charges, including airport taxes, landing fees, parking fees, overflight fees, port fees or charges, including wharfage and compulsory pilotage charges. However, the Mission will not claim exemption from charges which are in fact charges for services rendered. Exemptions and facilities that are to be accorded pursuant to this paragraph must be solicited by the Mission.

Privileges and immunities of the Mission

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

(*a*) The right of the Mission, including through contractors, to import, by the most convenient and direct route by land, sea or air, free of duty, taxes, fees and charges and free of prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods which are for the exclusive and official use of the Mission;

(*b*) The right of the Mission, including through contractors, to clear ex customs and excise warehouse, free of duty, taxes, fees and charges and free of prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods which are for the exclusive and official use of the Mission;

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

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 the Mission and the Government at the earliest possible date.

Exemptions and facilities that are to be accorded pursuant to this paragraph must be solicited by the Mission.

For the purposes of this paragraph, neither the Mission nor contractors will claim exemption from fees and charges which are in fact no more than charges for services rendered.

V. Facilities for the Mission and its contractors

Premises required for conducting the operational and administrative activities of the Mission

14. The Government shall provide, in agreement with the Special Representative and for the duration of the Mission's mandate and for such time thereafter as may be strictly required for the orderly winding down of the Mission's activities, such areas for headquarters and other premises as may be necessary for the conduct of the operational and administrative activities of the Mission, including the establishment of the necessary facilities for maintaining communications in accordance with paragraph 9. The cost of such premises shall be borne in accordance with Security Council resolution 2307 (2016) of 13 September 2016. Without prejudice to the fact that all such premises remain territory of Colombia, they shall be inviolable and subject to the exclusive control and authority of the United Nations. The Government shall guarantee unimpeded access to such United Nations premises. Where members of the Mission are co-located with military personnel of Colombia or members of the Revolutionary Armed Forces of Colombia—People's Army (FARC-EP), a permanent, direct and immediate access by the Mission to those premises shall be guaranteed.

15. The Government undertakes to assist the Mission in obtaining and making available, where applicable, water, sewerage, electricity and other facilities. Where such utilities or facilities are not provided free of charge, payment shall be made by the Mission on terms to be agreed with the competent authority. The Mission 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 the Mission as to essential government services.

16. The Mission shall have the right, where necessary, to generate, within its premises, electricity for its use and to transmit and distribute such electricity. It shall also have the right, where necessary, to construct water wells and waste water treatment systems within its premises for its own use.

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

Provisions, supplies and services, and sanitary arrangements

18. The Government agrees to grant promptly, upon presentation by the Mission of a bill of lading, airway bill, cargo manifest or packing list, all necessary authorizations, permits and licences required for the import of equipment, provisions, supplies, fuel, materials and other goods for the exclusive and official use of the Mission, including in respect of import by contractors, free of any prohibitions and restrictions and without the payment of monetary contributions or duties, fees, charges or taxes, including value-added tax. The Government likewise agrees to grant promptly all necessary authorizations, permits and licences required for the purchase or export of such goods, including in respect of purchase or export by contractors, free of any prohibitions and restrictions and without the payment of monetary contributions, duties, fees, charges or taxes. Special arrangements shall be made between the Government and the Mission for the implementation of the present paragraph.

19. The Government undertakes to assist the Mission 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 the Mission or by contractors for the official and exclusive use of the Mission, the Government shall make appropriate administrative arrangements for the exemption of any excise, tax or monetary contribution payable as part of the price. Upon request by the Mission, the Government shall exempt the Mission and contractors from general sales taxes in respect of all local purchases for the exclusive and official use of the Mission. In making purchases on the local market, the Mission shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy.

20. For the proper performance of the services in support of the Mission provided by contractors, other than by nationals of Colombia resident in Colombia, the Government agrees to provide such contractors with facilities for their entry into and departure from Colombia, without delay or hindrance, and for their residence in Colombia, as well as for their repatriation in time of crisis. For this purpose, the Government shall promptly issue to such contractors, free of charge and without any restrictions, all necessary visas, licences and permits. The Mission's contractors, other than nationals of Colombia resident in Colombia, shall be accorded the necessary facilities and privileges in regard to services and goods provided to the Mission for its official and exclusive use. Exemptions and facilities that are to be accorded pursuant to this paragraph must be solicited by the Mission.

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

Recruitment of local personnel

22. The Mission 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 the Mission.

VI. Status of the members of the Mission

Privileges and immunities

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

24. Officials of the United Nations assigned to serve with the Mission remain officials of the United Nations entitled, subject to paragraph 27, to the privileges and immunities, exemptions and facilities set out in articles V and VII of the Convention.

25. United Nations Volunteers recruited through the United Nations Volunteer programme assigned to serve with the Mission shall be assimilated to officials of the

United Nations assigned to serve with the Mission and shall accordingly enjoy the privileges and immunities, exemptions and facilities set out in articles V and VII of the Convention.

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

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

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

29. The Special Representative shall cooperate with the Government and shall render all assistance within his or her power in ensuring the observance of the customs and fiscal laws and regulations of Colombia by members of the Mission, in accordance with the present Agreement.

30. Privileges and immunities are granted to members of the Mission 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 member of the Mission in any case where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

Entry, residence and departure

31. The Special Representative and members of the Mission shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Colombia.

32. The Government undertakes to facilitate the entry into and departure from Colombia, without delay or hindrance, of the Special Representative and members of the Mission and shall be kept informed of such movements. For this purpose, the Special Representative and members of the Mission shall be exempt from passport and visa regulations and immigration inspection and restrictions, as well as from payment of any taxes, fees or charges on entering into or departing from Colombia. Members of the Mission shall

also be exempt from any regulations governing the residence of aliens in Colombia, including registration and residence and work permits, but shall not be considered as acquiring any right to permanent residence or domicile in Colombia.

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

Identification

34. The Special Representative shall issue to each member of the Mission before or as soon as possible after such member's first entry into Colombia, as well as to all locally recruited personnel, and to contractors, a numbered identity card, showing the bearer's name and photograph. Except as provided for in paragraph 33 of the present Agreement, such identity card shall be the only document required of a member of the Mission.

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

Uniforms and arms

36. United Nations Security Officers may wear the United Nations uniform. United Nations Security Officers may possess and carry items of security equipment, including global positioning devices, while on official duty in accordance with their orders within the premises of the Mission. When doing so, they must wear the United Nations uniform, except as otherwise provided in paragraph 37.

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

38. The Mission shall keep the Government informed of the number and the types of firearms carried by United Nations close protection officers and United Nations Security Officers serving in close protection details and of the names of the officers carrying them.

Permits and licences

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

40. The Government agrees to accept as valid, and where necessary promptly to validate, free of charge and without any restrictions, licences and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels, including those operated by contractors exclusively for the Mission. Without prejudice to the foregoing, the

Government further agrees to grant promptly, free of charge and without any restrictions, necessary authorizations, licences and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels.

41. The Government further agrees to accept as valid, without tax or fee, permits or licences issued by the Special Representative to United Nations close protection officers and to United Nations Security Officers serving in close protection details who are members of the Mission for the carrying or use of firearms or ammunition in strict connection with the functioning of the Mission.

Arrest and transfer of custody and mutual assistance

42. The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of the Mission. To this end, United Nations Security Officers shall patrol the areas provided for headquarters and other premises of the Mission 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 the Mission.

43. The personnel mentioned in paragraph 42 above may apprehend any other person caught *in flagrante delicto* on the premises of the Mission. Such other person shall be delivered immediately to the nearest appropriate official of the competent authority of the Republic of Colombia for the purpose of dealing with any offence or disturbance on such premises.

44. Subject to the provisions of paragraphs 23 and 26, competent authorities of the Republic of Colombia may:

(*a*) take into custody any member of the Mission when so requested by the Special Representative and consistent with Colombian law; or

(*b*) apprehend a member of the Mission caught *in flagrante delicto* in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any item collected, to the nearest appropriate representative of the Mission, after which the provisions of paragraph 49 shall apply.

45. The Mission shall afford to the competent authorities of the Republic of Colombia the widest possible measure of assistance in connection with investigations or court proceedings carried out by Colombia or by other States in respect of criminal offences committed in the territory of Colombia. The competent authorities of the Republic of Colombia shall afford to the Mission the widest possible measure of assistance in connection with administrative investigations or proceedings in respect of such offences. Assistance afforded pursuant to the present paragraph may include taking statements from other persons, the collection and production of evidence and, if possible, 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. When assistance is provided pursuant to the present paragraph on a confidential basis, the other party shall take the necessary measures to ensure that such confidentiality is respected and maintained. 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 43 or 44.

Safety and security

46. The Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel (the "Safety Convention") and its Optional Protocol, to both of which Colombia is party, are applied to and in respect of the Mission, its members and their equipment and premises.

47. Upon the request of the Special Representative, the Government shall provide such security as necessary to protect the Mission, its members and their equipment during the exercise of their functions. The Government shall also, upon request of the Special Representative, provide such assistance to the Mission as may be necessary for the evacuation of members of the Mission and their equipment from rural areas in the event of medical emergency or an emergency threatening their security.

Jurisdiction

48. Members of the Mission 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 the Mission and after the expiration of the other provisions of the present Agreement.

49. Should the Government consider that any member of the Mission has committed a criminal offence, it shall promptly inform the Special Representative and present to him or her any information available to it. Subject to the provisions of paragraph 23, the Special Representative shall determine whether or not the conduct of the member of the Mission concerned is related to his or her official duties and whether he or she is therefore immune from legal process. If the Special Representative determines that the member of the Mission is immune from legal process and the Secretary-General does not waive that immunity, criminal proceedings may not be instituted against that member with respect to the criminal offence concerned. If the Government disagrees with the determination of the Special Representative, the question shall be resolved as provided in paragraph 55 of the present Agreement. If the Special Representative determines that the member of the Mission is not immune from legal process or that he or she is immune but the Secretary-General waives that immunity, criminal proceedings may be instituted against that member with respect to the criminal offence concerned. In the event that criminal proceedings are instituted in accordance with the present Agreement, the courts and authorities of Colombia shall ensure that the member of the Mission concerned is prosecuted, brought to trial and tried in accordance with international standards of justice fairness and due process of law, as set out in the International Covenant on Civil and Political Rights (the "Covenant"), to which Colombia is a Party. The Government confirms that, in accordance with the Second Optional Protocol to the Covenant, to which Colombia is a Party, the death penalty has been abolished in Colombia and that accordingly no sentence of death will be imposed or carried out in the event of a guilty verdict.

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

(*a*) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 53 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 accordance with the national laws of Colombia. In that event, the courts and authorities of Colombia shall grant the member of the Mission concerned sufficient opportunity to safeguard his or her rights in accordance with due process of law and shall ensure that the suit is conducted in accordance with international standards of justice, fairness and due process of law, as set out in the Covenant. If the Special Representative certifies that a member of the Mission is unable, because of his or her official duties or authorized absence, to protect his or her interests in the proceeding, the Government shall, without intervening as a party in such proceedings and at the Special Representative's request, support by means of an official communication a request that the court afford the defendant sufficient time to arrange for his or her representation and appearance at the proceedings. The personal liberty of a member of the Mission 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

51. 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 the Mission who dies in Colombia, as well as that member's personal property located within Colombia, in accordance with United Nations procedures.

VII. Limitation of liability of the United Nations

52. Third party claims for property loss or damage or for personal injury, illness or death arising from or directly attributed to the Mission 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 53 of the present Agreement, provided that the claim is submitted within six months following the occurrence of the loss, damage or injury or, if the claimant did not know or could not reasonably have known of such loss, damage or injury, within six months from the time he or she had discovered the loss, damage or injury, but in any event not later than one year after the termination of the mandate of the Mission. 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

53. Except as provided in paragraph 55, any dispute or claim of a private law character to which the Mission or any member thereof is a party and over which the courts of Colombia 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 at the request of the Government. 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 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 the Mission, the Special Representative or the Secretary-General of the United Nations shall use his or her best endeavours to ensure compliance.

54. Disputes concerning the terms of employment and conditions of service of locally recruited personnel, as members of the Mission, shall be settled by the regulations, rules and procedures of the United Nations.

55. All other disputes between the Mission and the Government concerning the interpretation or application of the present Agreement that are not settled by negotiation shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission set out in paragraph 53 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.

56. 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 of section 30 of the Convention.

IX. Supplemental arrangements

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

X. Liaison

58. The Ministry of Foreign Affairs of the Government of Colombia shall act as the main liaison agency for all dealings between the Government of Colombia and the Mission. The Special Representative and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

XI. Miscellaneous provisions

59. Wherever the present Agreement refers to privileges, immunities, exemptions and rights of the Mission and to facilities Colombia undertakes to provide to the Mission, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, exemptions, rights and facilities by the appropriate local authorities.

60. The Government shall consider any imports and exports of goods and services, or purchases of goods and services made locally by the United Nations Development

Programme (UNDP) for the benefit of the Mission to fall within the scope of, and to benefit from the facilities and exemptions provided in, the Standard Basic Assistance Agreement.

61. The present Agreement shall enter into force immediately upon signature.

62. The present Agreement shall remain in force until the departure of the final element of the Mission from Colombia, except that:

(*a*) the provisions of paragraphs 46, 48, 51, 55 and 56 shall remain in force;

(*b*) the provisions of paragraphs 52 and 53 shall remain in force until all claims made in accordance with the provisions of paragraph 52 have been settled.

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

Done at New York on the 15th day of September Two Thousand and Sixteen, in duplicate, in the English and Spanish languages. In the case of any inconsistency, the text in the English language shall prevail.

For the United Nations	For the Government of the Republic of Colombia
[*Signed*] Jeffery Feltman	[*Signed*] Maria Emma Mejia Vélez
Under-Secretary-General for Political Affairs	Permanent Representative of the Republic of Colombia to the United Nations

(*g*) Agreement concerning the Relationship between the United Nations and the International Organization for Migration. New York, 19 September 2016*

The United Nations and the International Organization for Migration,

Bearing in mind the relevant provisions of the Charter of the United Nations and of the Constitution of the International Organization for Migration,

Recognizing the need to take into account migration and human mobility in the activities of the two Organizations and for close cooperation among all relevant organizations to strengthen their efforts in coordinating their respective activities related to migration and human mobility,

Recalling General Assembly resolution 47/4 of 16 October 1992 inviting the International Organization for Migration to participate in the sessions and the work of the General Assembly in the capacity of observer,

Recalling also the Cooperation Agreement between the United Nations and the International Organization for Migration of 25 June 1996,

* Entered into force provisionally on 19 September 2016 by signature, in accordance with article 16. United Nations registration no. II-1384.

Recalling further General Assembly resolution 51/148 of 13 December 1996 on the cooperation between the United Nations and the International Organization for Migration,

Recalling the Memorandum of Understanding between the United Nations and the International Organization for Migration regarding a Global Safety and Security Management Partnership of 25 June 2013,

Desiring to establish a mutually beneficial relationship whereby the discharge of respective responsibilities of the United Nations and the International Organization for Migration may be facilitated,

Taking note of the International Organization for Migration Council Resolution No. 1309 of 24 November 2015, which, *inter alia*, requested the Director General of the International Organization for Migration to develop with the United Nations a way in which the legal basis of the relationship between the International Organization for Migration and the United Nations could be improved,

Taking note of General Assembly resolution 70/263 of 27 April 2016 which, *inter alia*, recognized the need to establish a closer relationship between the United Nations and the International Organization for Migration and invited the Secretary-General to take steps to conclude an agreement concerning the relationship between the United Nations and the International Organization for Migration and to submit the negotiated draft agreement to the General Assembly for approval,

Have agreed as follows:

Article 1. Purpose of the Agreement

The present Agreement defines the terms on which the United Nations and the International Organization for Migration shall be brought into relationship with each other in order to strengthen their cooperation and enhance their ability to fulfil their respective mandates in the interest of migrants and their Member States.

Article 2. Principles

1. The United Nations recognizes the International Organization for Migration as an organization with a global leading role in the field of migration. The United Nations recognizes that the Member States of the International Organization for Migration regard it, as per the International Organization for Migration Council Resolution No. 1309, as the global lead agency on migration. The foregoing shall be without prejudice to the mandates and activities of the United Nations, its Offices, Funds and Programmes in the field of migration.

2. The United Nations recognizes the International Organization for Migration as an essential contributor in the field of human mobility, in the protection of migrants, in operational activities related to migrants, displaced people and migration-affected communities, including in the areas of resettlement and returns, and in mainstreaming migration in development plans.

3. The United Nations recognizes that the International Organization for Migration, by virtue of its Constitution, shall function as an independent, autonomous and non-normative international organization in the working relationship with the United Nations established by this Agreement, noting its essential elements and attributes defined by the Council of the International Organization for Migration as per its Council Resolution No. 1309.

4. The International Organization for Migration recognizes the responsibilities of the United Nations under its Charter and the mandates and responsibilities of other United Nations organizations and subsidiary organs and agencies, including in the field of migration.

5. The International Organization for Migration undertakes to conduct its activities in accordance with the Purposes and Principles of the Charter of the United Nations and with due regard to the policies of the United Nations furthering those Purposes and Principles and to other relevant instruments in the international migration, refugee and human rights fields.

6. The United Nations and the International Organization for Migration will cooperate and conduct their activities without prejudice to the rights and responsibilities of one another under their respective constituent instruments.

Article 3. Cooperation and coordination

1. The United Nations and the International Organization for Migration, recognizing the need to work jointly to achieve mutual objectives, and with a view to facilitating the effective exercise of their responsibilities, agree to cooperate closely within their respective mandates and to consult on matters of mutual interest and concern. To that end, the United Nations and the International Organization for Migration shall cooperate with each other in accordance with the provisions of their respective constituent instruments.

2. The International Organization for Migration agrees to participate in, and to cooperate with, any body or bodies that have been established or may be established by the United Nations for the purpose of facilitating such cooperation and coordination at the global, regional or country level, in particular through membership in:

(*a*) The United Nations System Chief Executives Board for Coordination and its subsidiary bodies (the High-level Committee on Programmes, the High-level Committee on Management (including the Inter-Agency Security Management Network), and the United Nations Development Group and its regional and country teams);

(*b*) The Inter-Agency Standing Committee;

(*c*) The Executive Committee on Humanitarian Affairs;

(*d*) The Global Migration Group;

(*e*) Country-level security management teams.

The International Organization for Migration agrees to participate in such bodies in accordance with their established rules of procedures and to contribute to their cost-shared budgets, as per established cost-sharing arrangements.

3. The International Organization for Migration may also consult with appropriate bodies established by the United Nations on matters within their competence and on which the International Organization for Migration requires expert advice. The United Nations, on its part, agrees to take such action as may be necessary to facilitate such consultation.

4. The United Nations bodies referred to above may also consult with the International Organization for Migration on all matters within its competence and on which they require expert advice. The International Organization for Migration, on its part, agrees to take such action as may be necessary to facilitate such consultation.

5. The United Nations and the International Organization for Migration, within their respective competencies and in accordance with the provisions of their respective constituent instruments, shall cooperate by providing each other, upon request, with such information and assistance as either organization may require in the exercise of its responsibilities.

6. The United Nations and the International Organization for Migration recognize the desirability of cooperation in the statistical field within the framework of their respective mandates.

7. The United Nations and the International Organization for Migration recognize the necessity of achieving, where applicable, effective coordination of the activities and services of the United Nations and the International Organization for Migration with a view to avoiding duplication of their activities and services.

Article 4. Reports to the United Nations

The International Organization for Migration may, if it decides it to be appropriate, submit reports on its activities to the General Assembly through the Secretary-General.

Article 5. Reciprocal representation

1. The Secretary-General of the United Nations shall be entitled to attend and to participate in relation to matters of common interest, without vote and in accordance with the relevant rules of procedure, in sessions of the Council of the International Organization for Migration. The Secretary-General shall also be invited, as appropriate, to attend and participate without vote in such other meetings as the International Organization for Migration may convene at which matters of interest to the United Nations are under consideration. The Secretary-General may, for the purposes of this paragraph, designate any person as his or her representative.

2. The Director General of the International Organization for Migration shall be entitled to attend plenary meetings of the General Assembly of the United Nations for the purposes of consultations. The Director General shall be entitled to attend and participate without vote in meetings of the Committees of the General Assembly and meetings of the Economic and Social Council, and, as appropriate and in accordance with the relevant rules of procedure, meetings of subsidiary organs of the Assembly and the Council. The Director General may, at the invitation of the Security Council, attend its meetings to supply it with information or give it other assistance with regard to matters within the competence of the International Organization for Migration. The Director General may, for the purposes of this paragraph, designate any person as his or her representative.

3. Written statements presented by the United Nations to the International Organization for Migration for distribution shall be distributed by the Administration of the International Organization for Migration to all members of the appropriate organ or organs of the International Organization for Migration. Written statements presented by the International Organization for Migration to the United Nations for distribution shall be distributed by the Secretariat of the United Nations to all members of the appropriate organ or organs of the United Nations.

Article 6. Proposal of agenda items

1. The Secretary-General of the United Nations may propose agenda items for consideration by the International Organization for Migration. In such cases, the United Nations shall notify the Director General of the agenda item or items concerned, and the Director General shall, in accordance with his or her authority and the relevant rules of procedure, bring any such agenda item or items to the attention of the appropriate governing body of the International Organization for Migration.

2. The Director General of the International Organization for Migration may propose agenda items for consideration by the United Nations. In such cases, the International Organization for Migration shall notify the Secretary-General of the agenda item or items concerned, and the Secretary-General shall, in accordance with his or her authority and the relevant rules of procedure, bring any such item or items to the attention of the relevant principal organ of the United Nations or such other organ or organs of the United Nations as may be appropriate.

Article 7. Exchange of information and documents

1. The United Nations and the International Organization for Migration shall arrange for the exchange of information, publications and documents of mutual interest.

2. The International Organization for Migration shall, to the extent practicable, furnish the United Nations, upon its request, with special studies or information relating to matters within the competence of the United Nations.

3. The United Nations shall likewise, to the extent practicable, furnish the International Organization for Migration, upon its request, with special studies or information relating to matters within the competence of the International Organization for Migration.

4. The United Nations and the International Organization for Migration shall make every effort to achieve maximum cooperation with a view to avoiding duplication in the collection, analysis, publication and dissemination of information related to matters of mutual interest. They shall strive, where appropriate, to combine their efforts to secure the greatest possible usefulness and utilization of such information.

Article 8. Administrative cooperation

The United Nations and the International Organization for Migration shall consult, whenever required, concerning the most efficient use of facilities, staff and services with a view to avoiding the establishment and operation of overlapping facilities and services. They shall also consult to explore the possibility of establishing common facilities or services in specific areas, with due regard to cost savings.

Article 9. Cooperation between the secretariats

The Secretariat of the United Nations and the Administration of the International Organization for Migration shall maintain a close working relationship in accordance with such arrangements as may be agreed upon from time to time between the Secretary-General of the United Nations and the Director General of the International Organization for Migration. Similar close working relationships between the secretariats of the other organizations within the United Nations system shall also be maintained in accordance

with arrangements between the International Organization for Migration and the organizations concerned.

Article 10. Personnel arrangements

The United Nations and the International Organization for Migration agree to consult whenever necessary concerning matters of common interest relating to the terms and conditions of employment of staff as well as to cooperate regarding the exchange of personnel based on conditions contained in supplementary arrangements concluded pursuant to Article 14 of this Agreement.

Article 11. United Nations laissez-passer

Members of the staff of the International Organization for Migration shall be entitled, in accordance with such administrative arrangements as may be concluded between the Secretary-General of the United Nations and the Director General of the International Organization for Migration, to use the *laissez-passer* of the United Nations as a valid travel document where such use is recognized by States in agreements defining the privileges and immunities of the International Organization for Migration.

Article 12. Expenses

Expenses resulting from any cooperation or provision of services pursuant to this Agreement shall be subject to separate arrangements between the United Nations and the International Organization for Migration.

Article 13. Protection of confidentiality

1. Nothing in this Agreement shall be so construed as to require either the United Nations or the International Organization for Migration to furnish any material, data and information the disclosure of which could, in its judgement, violate its obligation under its constituent instrument or policies on confidentiality to protect such material, data and information.

2. In case confidential material, data or information is provided, the United Nations and the International Organization for Migration shall ensure the appropriate protection of such material, data and information, in accordance with their constituent instruments and policies on confidentiality or in accordance with such supplementary arrangements as may be concluded between them for this purpose in accordance with article 14 of this Agreement.

Article 14. Supplementary arrangements for the implementation of the present Agreement

The Secretary-General of the United Nations and the Director General of the International Organization for Migration may, for the purpose of implementing the present Agreement, make such supplementary arrangements as may be found appropriate.

Article 15. Amendments

The present Agreement may be amended by agreement between the United Nations and the International Organization for Migration. Any such amendment shall be approved

by the General Assembly of the United Nations and by the Council of the International Organization for Migration. The United Nations and the International Organization for Migration shall notify each other in writing of the date of such approval, and the Agreement shall enter into force on the date of the later of the said approvals.

Article 16. Entry into force

1. The present Agreement shall be approved by the General Assembly of the United Nations and by the Council of the International Organization for Migration. The United Nations and the International Organization for Migration shall notify each other in writing of the date of such approval. The Agreement shall thereafter enter into force upon signature.

2. Upon its entry into force, this Agreement supersedes and replaces the Cooperation Agreement between the United Nations and the International Organization for Migration of 25 June 1996.

In witness thereof, the undersigned have signed the present Agreement.

Signed this 19th day of September 2016 at New York in two originals in the English language.

For the United Nations	For the International Organization for Migration
[*Signed*] Ban Ki-moon	[*Signed*] William Lacy Swing
Secretary-General	Director General

3. United Nations Entity for Gender Equality and the Empowerment of Women

Agreement between the United Nations represented by the United Nations Entity for Gender Equality and the Empowerment of Women and the Government of the United Arab Emirates concerning the establishment of a UN-Women liaison office for Gulf Countries. New York, 15 July 2016*

Whereas the General Assembly of the United Nations has established the United Nations Entity for Gender Equality and the Empowerment of Women (hereinafter referred to as "UN-Women") as per its resolution no. 64/289 dated 21 July, 2010 to assist Member States and the United Nations System to progress more effectively and efficiently toward the goal of achieving gender equality and the empowerment of women;

* Entered into force on 15 July 2016 by signature, in accordance with article XXX. United Nations registration no. I-53794.

WHEREAS UN-Women, in addition to leading the coordination with United Nations Country Teams (UNCTs) and United Nations Development Goals on gender equality and women's empowerment, is supporting national partners in the Middle East and North Africa region, including in Gulf and Arab countries in empowering women and promoting gender equality;

CONSIDERING that UN-Women has accepted the generous offer of the Government of the United Arab Emirates to host a UN-Women Liaison Office in Abu Dhabi;

CONSIDERING that UN-Women is an integral part of the United Nations, whose status, privileges and immunities are governed by the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, to which the United Arab Emirates acceded on 2 June 2003, without reservation;

CONSIDERING that the General Women's Union is the national institution in the United Arab Emirates responsible for the advancement and empowerment of women;

CONSIDERING that UN-Women recognizes the role of the General Women's Union and shall collaborate with that institution in relation to activities of the Liaison Office;

CONSIDERING that it is desirable to conclude an Agreement, complementary to the Convention on the Privileges and Immunities of the United Nations, to regulate questions not envisaged in that Convention arising as a result of the location of a UN-Women Liaison Office in the United Arab Emirates;

NOW, THEREFORE UN-Women and the Government, hereinafter collectively referred to as "the Parties" and each a "Party", have entered into this Agreement in a spirit of friendly co-operation:

Article I. Definitions

For the purposes of this Agreement:

(*a*) "Host Country" means the United Arab Emirates;

(*b*) "Government" means the Government of the United Arab Emirates;

(*c*) "the Parties" means UN-Women and the Government;

(*d*) "Head of the Office" means the official who is the Head of the Office;

(*e*) "Experts on Mission" means persons, other than officials of the Office, performing missions at the request of or on behalf of the Office, as referred to in article VI of the General Convention;

(*f*) "Officials of the Office" means all United Nations staff members assigned to service the Office irrespective of nationality, with the exception of those who are locally recruited and paid hourly rates, as provided for in United Nations General Assembly resolution 76 (1) of 7 December 1946;

(*g*) "Persons performing services" means operational experts, consultants and juridical as well as natural persons and their employees;

(*h*) "Representatives of Parties to the Convention" means persons charged by a State with the duty to act on its behalf on matters related to the Gulf Liaison Office;

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

(*j*) "Competent authorities" means central, local and other authorities under the laws of the Host Country;

(*k*) "Premises of the Office" means the building or part of building occupied permanently or temporarily by the Office or by meetings convened in the United Arab Emirates by the Office, and as defined in Annex A or in any Supplementary Agreements to this Agreement, including any other land, buildings or platforms that may from time to time be included, temporarily or permanently, in accordance with this Agreement or by Supplementary Agreements entered into with the Government;

(*l*) "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;

(*m*) "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;

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

(*o*) "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. Establishment of the Office

The seat of the Office shall be established in the City of Abu Dhabi, to carry out the functions of a Liaison Office, including:

(*a*) Resource mobilization and partnership development in the areas of policy advice and political advocacy with Gulf and Arab institutions regarding advancement and empowerment of women; and

(*b*) Provision of technical assistance, in coordination with UN-Women Headquarters, to advance the status of women in the Middle East and North Africa region and support national governments' efforts in the Gulf Cooperation Council (GCC) in various areas relating to equality between women and men and women's empowerment;

(*c*) Cooperation as outlined in article III.

Article III. Scope of Cooperation

The Office shall provide the necessary technical assistance on gender equality and women's empowerment to the competent authorities of the Host Country upon their request, the scope of which may be further agreed between the Parties in supplemental agreements further to article XXVIII.

Article IV. Juridical Personality

1. The Office shall possess juridical personality in the United Arab Emirates. It shall have the capacity:

(*a*) to contract;

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

(*c*) to institute legal proceedings.

2. For the purposes of this Agreement, the Office shall be represented by the Head of the Office.

Article V. Purpose and Scope of the Agreement

1. This Agreement regulates the status of the Office's premises, officials, experts on mission and persons performing services in the Host Country.

2. This Agreement sets out the arrangements necessary for the effective discharge of the functions by the Office. It does not set out the relations and modalities of assistance rendered by the United Nations or the Office to the Host Country as part of its mandate.

3. The Government confirms that the treatment afforded to the Office shall be on terms and conditions not less favourable than those accorded to offices of the United Nations System in the Host Country.

4. Any building in or outside Abu Dhabi, United Arab Emirates, 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 premises of the Office and shall be deemed to be covered by this Agreement for the duration of such meetings, training courses, symposiums, workshops and similar activities organized by the Office.

Article VI. Application of the General Convention

The General Convention shall be applicable to the Office, its property, funds and assets, and to its officials, experts on mission and persons performing services in the Host Country.

Article VII. Inviolability of the Office

1. As set forth in the General Convention, the Office shall be inviolable and 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 immunity shall have expressly been waived in accordance with the General Convention. No waiver of immunity from legal process shall extend to any measure of execution.

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

3. 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.

4. The premises of the Office shall not be used in any manner incompatible with the purpose and scope of the Office, as set forth in article V above.

5. 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 VIII. Security and Protection

1. The competent authorities shall ensure the security and protection of the premises of the Office 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 the 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 therefrom.

2. The competent authorities shall take effective and adequate action which may be required to ensure the appropriate security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Office free from interference of any kind.

Article IX. Public Services

1. The competent authorities shall facilitate, upon request of the Head of the Office and under terms and conditions not less favourable than those accorded to offices of the United Nations System in the Host Country, access to the public services needed by the Office such as, but not limited to, utility, power and communications services.

2. In cases where public services referred to in paragraph 1, 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 accredited foreign missions.

3. 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.

4. The provisions of this article shall not prevent the reasonable application of fire protection or sanitary regulations of the Host Country.

Article X. Communications Facilities

1. 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.

2. 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.

3. 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.

Article XI. Funds, Assets and Other Property

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

2. The property and assets of the Office shall be exempt from restrictions, regulations, controls and moratoria of any nature.

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

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

(*b*) shall be free to transfer its funds or currency from the Host Country to another country, or within the Host Country, to the United Nations or any other agency;

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

Article XII. Exemption from Taxes, Duties, Import or Export Restrictions

The Office, its assets, funds and other property shall enjoy:

(*a*) Exemption from all direct and indirect taxes and levies, fees, tolls and duties; 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 Host Country 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, charges and all other levies, as well as from limitations 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 Host Country except under conditions agreed to by the competent authorities;

(*c*) Exemption from all limitations 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 XIII. 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 General 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 General 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 and acts done in connection with such meetings, seminars, training courses, symposiums, workshops and similar activities.

Article XIV. Officials of the Office

1. Officials shall enjoy the following privileges, immunities and facilities in the Host Country:

(*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 in force after termination of employment with the United Nations;

(*b*) Immunity from personal arrest or detention and from seizure of their personal and official effects and baggage for acts performed in the discharge of their functions except in case of *flagrante delicto*, and in such cases the competent authorities shall immediately inform the Head of the Office of the arrest, detention or seizure;

(*c*) 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;

(*d*) Exemption from any military service obligations or any other obligatory service in the Host Country;

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

(*f*) Exemption for themselves for the purpose of official business from any restriction on movement and travel inside the Host Country and a similar exemption for themselves and for their spouses and dependent members of their families for recreation in accordance with arrangements agreed upon between the Head of Office and the competent authorities;

(*g*) 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;

(*h*) The same protection and repatriation facilities with respect to themselves, their spouses, and dependent members of their families as are accorded in time of international crisis to diplomatic envoys;

(*i*) The right to import for their personal use, free of duties, taxes (including value added and sales tax) and other levies, prohibitions and restrictions on imports:

(i) Import free of custom and exercise duties limited quantities of certain articles intended for personal use or consumption and not for gift or sale;

(ii) Import a motor vehicle free of custom and excise duties, including value-added tax, in accordance with existing regulations of the United Arab Emirates applicable to members of diplomatic missions of comparable ranks. This right to import a motor vehicle is renewable every three years. A vehicle imported pursuant to this Agreement may be sold under conditions agreed with the Host Country.

(*j*) Officials shall be entitled, on the termination of their functions in the United Arab Emirates, to export their furniture and personal effects, including motor vehicles, without duties and taxes.

2. Officials of United Arab Emirates nationality or with permanent residency status in the Host Country shall enjoy only those privileges and immunities provided for in Section 18 of the General Convention.

3. In accordance with the provisions of Section 17 of the General Convention, the competent authorities shall be periodically informed of the names of the officials assigned to the Office.

Article XV. Head of the Office; Senior Officials

1. Without prejudice to the provisions of the above article, the Head of the Office shall enjoy during his or her residence in the Host Country the privileges, immunities and facilities granted to heads of accredited foreign missions to the Host Country. Furthermore, without prejudice to the provisions of the above article, all officials assigned to the Office, having the rank of P/L-5 or above, shall be accorded the privileges, immunities and facilities granted to diplomatic staff at missions accredited to the Host Country. Their names shall be included in the diplomatic list.

2. The privileges, immunities and facilities referred to in paragraph 1 above shall also be accorded to a spouse and dependent members of the family of the officials concerned.

Article XVI. Experts on Mission

1. Experts, other than officials, on mission for the Office, shall be granted the privileges, immunities and facilities specified in articles VI and VII of the General Convention.

2. Experts on mission shall be granted exemption from taxation on the salaries and other emoluments paid to them by the Office, and may be accorded such additional privileges, immunities and facilities as maybe agreed upon between the Parties.

3. Experts on mission of United Arab Emirates nationality or with permanent residency status in the Host Country shall enjoy only those privileges and immunities that come within the scope of articles VI and VII of the General Convention.

Article XVII. Persons Performing Services

The Government shall grant all persons performing services for or on behalf of the Office the same privileges, immunities and facilities specified in article VI of the General Convention.

Article XVIII. Locally-Recruited Personnel Assigned to Hourly Rates

1. 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.

2. Personnel recruited in the Host Country 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 the United Nations.

Article XIX. Waiver of Immunity

Privileges and immunities referred to in articles XIV through XVIII above are granted to the relevant personnel or experts on mission in the interest of the United Nations and not for their personal benefit. The right and the duty to waive the immunity of these persons, in any case where it will impede the course of justice can be waived without prejudice to the interests of the United Nations shall lie with the Secretary-General of the United Nations.

Article XX. Entry into, Exit from, Movement and Sojourn within the Host Country

1. All persons referred to in articles XIV, XV, XVI and, where applicable, XVII of this Agreement shall have the right of unimpeded entry into, exit form, sojourn and free movement within the Host Country. Visas, entry permits or licences, where required, shall be granted as promptly as possible and free of charge, provided that the host country shall be notified with the names of those persons.

2. 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 form, sojourn and free movement within the Host Country. Visas, entry permits or licences, where required, shall be granted as promptly as possible and free of charge. The provisions outlined in this paragraph do not exclude the right of the competent authorities of the Host Country to not accept entry of a particular individual if such objections are related to specific criminal matters or compelling security concerns of the Host Country.

Article XXI. United Nations Laissez-Passer*, Certificates and Visas*

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

2. In accordance with the provisions of Section 26 of the General Convention, the competent authorities shall recognize and accept the United Nations certificate issued to experts and other persons travelling on the business of the United Nations.

3. All persons referred to in this Agreement shall be granted facilities for speedy travel. Visas, entry permits or licences, where required, shall be granted free of charge and as promptly as possible to the persons referred to in this Agreement, their dependents and other persons invited to the Office in connection with the official work and activities of the Office.

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

5. Similar facilities to those specified in paragraphs 3 and 4 above, shall be accorded to experts on mission 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 XXII. Identification Cards

1. At the request of the Head of the Office, the Government shall issue identification cards to all persons referred to in this Agreement certifying their status under this Agreement, and facilitate their access to the services that require carrying such cards.

2. Upon the demand of an authorized official of the competent authorities, persons referred to in paragraph 1 above shall be required to present, but not to surrender, their identification cards.

Article XXIII. Flags, Emblem and Markings

The Office shall be entitled to display the United Nations flag, logo, emblem and markings in the Office premises and on vehicles used for official purposes.

Article XXIV. Social Security

1. The United Nations Joint Pension Fund shall enjoy legal capacity in the Host Country and shall enjoy the same exemptions, privileges and immunities as the United Nations itself. Benefits received from the Pension Fund shall be exempt from taxation.

2. The United Nations and the Government agree that, owing to the fact that officials of the United Nations are subject to the United Nations Staff Regulations and Rules, including article VI thereof, which establish 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 United Arab Emirates during their appointment with the United Nations.

3. The provisions of paragraph 1 above shall apply *mutatis mutandis* to the members of families forming part of the household of persons referred to in paragraph 1 above, unless they are employed or self-employed in the Host Country or receive social security benefits from the Host Country.

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

1. The competent authorities, based on a written agreement with the Office, shall grant working permits for spouses of officials assigned to the Office.

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.

3. The Government shall assist officials, experts on mission and persons performing services assigned to the Office, as far as possible, in obtaining premises for use as residences.

Article XXVI. Cooperation with the Competent Authorities

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 respect the laws and regulations of the Host Country, and not to interfere in the internal affairs of the Host Country.

2. Without prejudice to the privileges and immunities referred to in this Agreement, the United Nations shall cooperate at all times with the competent 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 XXVII. Government Contribution

The Government shall provide, without cost and in agreement with UN-Women for as long as is required, such areas for offices or other premises as may be necessary for the operations and activities of UN-Women in the United Arab Emirates. The terms and conditions relating to the occupancy and use of premises shall be not less favourable than those accorded by the Government to other United Nations Offices in the United Arab Emirates. The Government shall also assist UN-Women in the installation and supply of, and provide to UN-Women free of charge or if not possible at the most favourable rate, utility services including but not limited to, water, electricity and sewerage, communications, fire protection services, security and other services for the Liaison Office, as may be requested by UN-Women. The Government shall also contribute for as long as is required to the costs of operating and maintaining the Liaison Office, as agreed upon by both parties in supplemental Agreements concluded further to article XXVIII of this Agreement.

Article XXVIII. Supplemental Agreements

1. Arrangements of an administrative and financial nature concerning the Office may be made by supplemental agreements, as appropriate.

2. The Parties may enter into any other supplemental agreements as the Parties may deem appropriate.

Article XXIX. Settlement of Disputes

1. The United Nations shall make provisions for appropriate methods of settlement of:

(*a*) Disputes arising out of contracts and disputes of a private law character to which the Office is a party; and in consultation with the Government;

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

2. 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 an arbitral 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 XXX. Final Provisions

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

2. This Agreement may be modified by written agreement between the Parties hereto. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of the United Nations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

3. The Agreement may be terminated by either Party by written notice to the other. Upon receipt of such notice UN-Women shall take the necessary steps to ensure that the activities carried out under the Agreement are brought to a prompt and orderly conclusion and shall not engage in new activities.

4. The Agreement shall remain in force for a six-month period for the purposes of fulfilment or termination of all obligations entered into by virtue of this Agreement.

5. This Agreement shall be subject to the signature of both Parties. It shall enter into force on the date of the last signature thereof.

In witness whereof, the undersigned, duly appointed representatives of the Patties, have signed the present Agreement at New York, New York, USA, on the 15th of July 2016, in two originals each in the English and Arabic languages, all texts being equally authentic. In case of any divergence between the texts, the English text shall prevail.

For UN-Women

[*Signed*] Ms. Lakshmi Puri
Deputy Executive Director and
Assistant Secretary-General

For the United Arab Emirates

[*Signed*] Dr. Abdulrahim Alawadi
Assistant Foreign and International
Cooperation Minister for Legal Affairs

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*

In 2016, no State acceded to the Convention. As at 31 December 2016, there were 127 States parties to the Convention.**

2. International Labour Organization

On 7 November 2016, an agreement for extension of the "Supplementary Understanding and its Minutes of the Meeting dated 26 February 2007, to 31 December 2017" was concluded and entered into force with the Government of Myanmar. This agreement extends the Supplementary Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her.***

3. Food and Agriculture Organization

(*a*) Agreements regarding the establishment of FAO Representations and Offices

The legal status, privileges and immunities enjoyed by FAO representations, regional, country and liaison offices, their personnel and assets are set out in agreements concluded with the host States. In 2016, agreements concerning the establishment of FAO representations were concluded with Afghanistan on 5 September 2016 and Tajikistan on 6 May 2016, both superseding earlier agreements. The Organization also concluded an agreement with the Republic of Côte d'Ivoire on 8 April 2016 for the establishment of an FAO Partnership and Liaison Office, as well as with the Lebanese Republic on 13 August 2016 for the establishment of an FAO sub-regional Office for the Mashreq countries.

(*b*) Agreements for hosting meetings of FAO Bodies

For the purpose of holding international conferences and meetings of FAO bodies outside FAO Headquarters and premises, FAO normally concludes agreements specifying the privileges and immunities and other facilities that the Organization and participants (delegations and observers) will enjoy for the purpose of the meeting. These agreements

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

** For the list of the States parties to the Convention, 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.

*** http://www.ilo.org/dyn/legprot/en/f?p=2200:10002:3979321366692::NO:10002:P10002_COUNTRY_ID:103159:NO.

are based on a standard Memorandum of Responsibilities.* In 2016, Memoranda of Responsibilities were concluded with Australia, the Republic of Chile, the French Republic, the Federal Republic of Germany, the Republic of India, the Republic of Kazakhstan, the Republic of Kenya, the Republic of Malta, the Kingdom of Morocco, the Kingdom of the Netherlands, the Islamic Republic of Pakistan, the Portuguese Republic, the Republic of Senegal, the Republic of Uganda and the Republic of Vanuatu.

(*c*) Agreements concerning FAO technical assistance activities

In accordance with article XVI of the FAO Constitution, and in line with longstanding practice, a substantial number of agreements were concluded with FAO Members for the purpose of regulating technical assistance activities to be conducted within their jurisdictions. Generally, these agreements addressed the legal status of FAO, its privileges and immunities, and included provisions holding FAO harmless from any claim or liability arising from, or in connection with, the FAO activities within the State concerned. A significant number of contribution agreements were also concluded with resource partners to support these technical assistance activities.

The application of fiscal exemptions to technical assistance activities were a matter of particular attention in 2016. For example, in 2016, the FAO received a request for payment of custom duties in respect of equipment shipped to a Member Nation within the framework of a technical assistance project. In this case, the FAO confirmed its view that the privileges and immunities it enjoys under the FAO Constitution, the 1947 Convention on Privileges and Immunities of the Specialized Agencies, as well as the host country agreement with the Member State concerned, apply to all official activities carried out by the Organization, including its technical assistance activities which represent official functions of the Organization as reflected in article I of the FAO Constitution. The FAO recalled that, pursuant to Section 9 of the 1947 Convention on Privileges and Immunities of the Specialized Agencies, specialized agencies are exempt "from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the specialized agencies for their official use".

(*d*) Employment-related matters

During 2016, staff and non-staff personnel of the FAO submitted a number of applications to national judicial authorities and ministries of foreign affairs concerning employment-related matters. Many of these applications challenged the non-renewal of fixed-term appointments and/or requested the payment of benefits, including social security benefits, on the basis of national legislation. The participation of the FAO in national social security schemes was also requested by some national authorities.

The FAO's position regarding these matters remained in accordance with the established position of the UN System. The FAO recalled its immunity from every form of legal process. In some cases, where a Member had referred to the Vienna Convention on Diplomatic Relations, the FAO clarified the non-applicability of that Convention to the

* See Chapter II.B.2.(*a*) of the *United Nations Juridical Yearbook 1972* (United Nations Publication, Sales No. E.74.V.1).

Organization, highlighting that the immunity of international organizations is to be differentiated from the immunity enjoyed by sovereign States, and that absolute immunity from legal process applies to UN System organizations in respect of all types of disputes, including those related to employment. The FAO also recalled the established diplomatic practice by which ministries of foreign affairs would intervene, when necessary, before domestic courts and other fora to confirm the FAO's immunity from jurisdiction. In these cases, the FAO also recalled the international character of the employment relationship between the Organization and its staff deriving from the FAO Constitution, and confirmed the non-applicability to the Organization of any national labour laws, including with regard to locally recruited personnel, except as may otherwise be specified in their contracts of employment.

4. United Nations Educational, Scientific and Cultural Organization

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

> *"Privileges and Immunities*
>
> The Government of [name of the State] shall apply, in all matters relating to this meeting, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations as well as Annex IV thereto to which it has been a party from [date].
>
> In particular, the Government shall not place any restriction on the entry into, sojourn in, and departure from the territory of [name of the State] of all persons, of whatever nationality, entitled to attend the meeting by virtue of a decision of the appropriate authorities of UNESCO and in accordance with the Organization's relevant rules and regulations.
>
> *Damage and accidents*
>
> As long as the premises reserved for the meeting are at the disposal of UNESCO, the Government of [name of State] shall bear the risk of damage to the premises, facilities and furniture and shall assume and bear all responsibility and liability for accidents that may occur to persons present therein. The [name of State] authorities shall be entitled to adopt appropriate measures to ensure the protection of the participants, particularly against fire and other risks, of the above-mentioned premises, facilities and furniture. The Government of [name of State] may also claim from UNESCO compensation for any damage to persons and property caused by the fault of staff members or agents of the Organization."

5. International Civil Aviation Organization

Supplementary Agreement between the International Civil Aviation Organization and the Government of Canada regarding the headquarters of the International Civil Aviation Organization. Montreal, 27 May 2013*

The Government of Canada and the International Civil Aviation Organization (the "Parties"),

Considering the Government of Canada's obligations as Host State to the International Civil Aviation Organization (the "Organization");

Considering the Headquarters Agreement between the Government of Canada and the International Civil Aviation Organization, done at Calgary and Montreal on 4 and 9 October 1990 (the "Headquarters Agreement");

Considering that the Government of Canada has the intention to exercise on or before 1 December 2015, the option to purchase on 30 November 2016, an immovable known as "*La Maison de l'OACI*" (the "Immovable"), composed of a building located at 999 University Street, Montreal, Quebec, Canada (the "Building") and of the lands on which the Building is erected, under the terms of the lease between the Government of Canada and the owner of the Immovable, a copy of which was published at the Land Registry Office of the registration division of Montreal, under the number 4789527;

Considering the necessity to replace the Supplementary Agreement between the Government of Canada and the International Civil Aviation Organization regarding the Headquarters of the International Civil Aviation Organization, done at Montreal on 28 May 1999 (the "1999 Supplementary Agreement") with a new Supplementary Agreement and its annexes (the "Supplementary Agreement") in order to reflect the relationship between the Government of Canada, as owner of the Immovable, and the Organization, as occupant of the Immovable;

Considering that the Immovable will continue to constitute the headquarters premises (the "Headquarters") of the Organization;

Considering the contributions made by the Parties in the context of the 1999 Supplementary Agreement;

Have agreed as follows:

Article I. Ownership and Occupancy of the Immovable

1. The Organization accepts that the Government of Canada shall be the sole owner of the Immovable and expressly renounces any right belonging to or stipulated in favour of the Organization pursuant to article VII of the 1999 Supplementary Agreement.

2. The Government of Canada permits the Organization to occupy the Immovable, for a period of twenty (20) years, commencing on 1 December 2016 and terminating on 30 November 2036 (the "Occupancy Period"), for the sole purpose of providing reasonable and adequate space for the Headquarters of the Organization, without cost except as explicitly provided for in this Supplementary Agreement.

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* Entry into force provisionally on 23 October 2013 by notification and definitively on 1 December 2016, in accordance with article VIII. United Nations registration no. A-28718. The texts of the annexes are not reproduced herein.

3. The Organization shall occupy the Immovable for the duration of the Occupancy Period for the sole purpose of its Headquarters. The Organization shall use and occupy the Immovable in accordance with its mandate and the provisions of this Supplementary Agreement.

Article II. Obligations of the Government of Canada and of the Organization

1. Subject to the relevant provisions of the Headquarters Agreement, the rights and obligations of the Government of Canada as owner of the Immovable towards the Organization, and the rights and obligations of the Organization as occupant of the Immovable towards the Government of Canada, shall be governed by this Supplementary Agreement.

2. The Government of Canada shall, for the duration of the Occupancy Period, pay the costs of a capital nature related to the Immovable.

3. The Government of Canada shall, for the duration of the Occupancy Period, make the payments in lieu of taxes related to the Immovable in accordance with the Payments in Lieu of Taxes Act (R.S.C. 1985, c. M-13) and pay the Maintenance and Operating Costs related to the Immovable as defined in paragraph 1 of Annex II of this Supplementary Agreement. The Maintenance and Operating Costs related to the Immovable do not include costs of a capital nature related to the Immovable.

4. The Organization shall, for the duration of the Occupancy Period, reimburse the Government of Canada, on an annual basis, a sum equal to twenty per cent (20%) of the Maintenance and Operating Costs related to the Immovable pursuant to Annex II of this Supplementary Agreement, in a manner decided by the Parties.

5. The Government of Canada and the Organization shall take all reasonable measures to ensure that the Maintenance and Operating Costs related to the Immovable are kept as low as possible, including through the use of competitive bidding where appropriate.

6. The Government of Canada shall provide the Organization with a detailed financial breakdown of the costs of the items listed in Annex II, on an annual basis, in a format decided by the Parties. The Government of Canada shall also provide the Organization with a copy of its annual external audit report when it becomes available, as well as provide access to any relevant supporting documents at the request of the Organization.

7. The Government of Canada shall self-insure and underwrite its own risks and losses as concerns the Immovable.

8. The Organization shall subscribe to and maintain in force throughout the Occupancy Period, at its expense, comprehensive all-risk property insurance for contents belonging to the Organization and civil liability insurance as specified in Annex IV.

9. No Party shall be responsible towards the other Party with respect to a risk which is the responsibility of such other Party to insure or self-insure.

10. The Organization shall pay all costs and expenses related to the modification, alteration, improvement or redevelopment of the interior space of the Immovable carried out in accordance with paragraph 4 of Annex I of this Supplementary Agreement.

11. Without prejudice to any other provision of this Supplementary Agreement, the Government of Canada shall, on a one-time basis, make available additional funds for the redevelopment of the interior space of the Building. These funds will total up to one million four hundred thousand Canadian dollars (CAD$1,400,000) per annum for five (5)

consecutive years, starting in 2017, for a total of up to seven million Canadian dollars (CAD$7,000,000).

12. The nature of these redevelopment works shall be determined in consultation between the Parties prior to the commencement of the work and shall be undertaken in accordance with the relevant provisions of this Supplementary Agreement, except as otherwise decided by the Parties.

Article III. Governance

1. The Parties shall establish a Property Management Committee (the "Committee").

2. The Committee shall be composed of representatives of each Party. The Committee may invite other participants to join in its deliberations as appropriate.

3. The purpose of the Committee is to consult on operational matters referred to in Annexes I, II, III and IV of this Supplementary Agreement, works of a capital nature, as well as on any other matter relating to the safe operation and sound management of the Immovable which the representatives of either Party may present to the Committee.

Article IV. Space Allocated to Representatives and Others

1. Subject to the relevant provisions of this Supplementary Agreement, the Organization shall have the right to:

(*a*) provide office space in the Building for occupancy by Representatives of the Member States on the Council of the Organization;

(*b*) provide office space in the Building for occupancy by Representatives of such other Member States of the Organization and by Representatives of other international organizations which are accredited to the Organization, to the extent that such occupancy does not compromise the needs of the Organization for accommodation of the bodies of the Organization, its Secretariat and its personnel;

(*c*) provide parking space in the Building to its personnel, to the Representatives mentioned in paragraphs 1(*a*) and 1(*b*), and to such other persons as required by the official activities of the Organization;

(*d*) make available, for the purpose of holding meetings, conference facilities of the Building to:

(i) other United Nations (the "UN") bodies or agencies, and intergovernmental and non-governmental organizations identified on the Organization's List of International Organizations That May Be Invited to Attend Suitable ICAO Meetings, as may be amended from time to time by the Organization, and recognized for the purpose of this Article by an exchange of diplomatic notes between the Parties confirming any amendments. Any charge related to this use shall be retained by the Organization and any expenses related to this use shall be borne by the Organization. The Organization shall inform the Government of Canada in writing of its decision to make available the conference facilities in the manner provided herein, as soon as possible prior to the date scheduled for the holding of the meeting by those bodies, agencies and organizations;

(ii) other bodies, agencies or organizations not included in paragraph 1(*d*)(i), subject to obtaining, as soon as possible in advance of the date scheduled for the holding of the meeting by those bodies, agencies and organizations, the prior express written consent of the Government of Canada, which shall not be unreasonably withheld. Any charge related to this use shall be retained by the Organization and any expenses related to this use shall be borne by the Organization.

(*e*) collect and retain a reasonable charge for the use and occupancy of the spaces and the facilities referred to in paragraphs 1(*a*) to (*d*).

2. Notwithstanding paragraph 1(*e*), the Organization shall establish the charges for conference facilities provided to UN bodies or agencies at a preferential rate in comparison to the charge for conference facilities provided to other entities.

3. The Parties understand that no consular activities shall be carried out in the Building.

4. The Organization shall provide to the Government of Canada, without cost, office space in the Building as reasonably required for occupancy by Representatives of Canada to the Organization, as well as by other representatives of the Government of Canada for the purpose of operation and management of the Building. The Organization shall also provide to the Government of Canada, without cost, a total of two (2) parking spaces in the Building.

5. The Organization confirms that the Government of Canada may use the conference facilities of the Building for its official purposes, without cost, if these facilities are available and the use by the Government of Canada does not conflict with the reasonable needs of the Organization, as assessed by the Organization following consultation between the Parties as described in Article III of this Supplementary Agreement. The Government of Canada shall be responsible for any incremental administrative costs resulting from this use.

6. For the purpose of the activities referred to in paragraph 1(*d*), when facilities are made available to organizations or individuals who do not enjoy privileges and immunities in Canada comparable to those enjoyed by the Organization, the Organization is deemed to be involved in commercial activities and to have renounced, with respect to such activities, the immunities referred to in Articles 3 and 4 of the Headquarters Agreement. However, when the Organization makes available conference facilities to intergovernmental organizations working in the field of civil aviation as defined in paragraph 1(*d*)(i), to meet in the context of the Council or Assembly of the Organization, the use of conference facilities will be considered related to the work of the Organization.

7. The Organization shall provide to the Committee described in Article III of this Supplementary Agreement, on an annual basis, a detailed information report regarding the use and occupancy of the Immovable and the activities referred to in paragraph 1, including an itemized statement of any fees collected in relation to those activities.

Article V. Security

In consultation with the Government of Canada, the Organization shall provide in the Building internal security measures required by the nature, function and operations of the Organization. The administrative management of these internal security measures shall be the responsibility of the Organization. The cost of these internal security measures shall also be the responsibility of the Organization, except as otherwise decided by the Parties.

Article VI. Settlement of Disputes

Any dispute between the Government of Canada and the Organization concerning the interpretation or application of this Supplementary Agreement shall be resolved through consultations between the Parties. A dispute which remains unresolved despite consultations between the Parties can be settled in accordance with Article 32 of the Headquarters Agreement.

Article VII. Court Actions

1. Without prejudice to the privileges and immunities of the Organization referred to in the Headquarters Agreement, the Government of Canada reserves its right to refer any cause of action *vis-a-vis* a third party and related to the Immovable, to the competent courts of Canada.

2. The Organization shall, in such circumstances, facilitate the proper administration of justice and assist the Government of Canada by providing all relevant evidence.

Article VIII. Final Clauses

1. The Annexes attached to this Supplementary Agreement shall form an integral part of this Supplementary Agreement.

2. This Supplementary Agreement does not affect any of the provisions of the Headquarters Agreement.

3. This Supplementary Agreement may be amended in writing at the request of either the Government of Canada or the Organization, subject to mutual consultation and mutual consent concerning any amendments. The Government of Canada and the Organization may conclude additional written supplementary agreements amending the provisions of this Supplementary Agreement so far as this is deemed desirable.

4. This Supplementary Agreement shall enter into force on the date of the last diplomatic note by which the Parties have notified each other that all necessary internal procedures for its entry into force have been completed but shall not take effect until 1 December 2016. Amendments shall enter into force in the same manner.

5. This Supplementary Agreement shall remain in force for the duration of the Occupancy Period.

6. Any benefit, right or advantage provided to the Organization under this Supplementary Agreement shall be for the Organization's sole and exclusive use and enjoyment, and shall not be transferred or assigned.

7. This Supplementary Agreement shall supersede the 1999 Supplementary Agreement.

In witness whereof the respective Representatives of the Parties, being duly authorized thereto, have signed this Supplementary Agreement.

Done in duplicate at Montreal on the 27th day of May 2013, in the English and French languages, both texts being equally authentic.

[*Signed*]	[*Signed*]
For the Government of Canada	For the International Civil Aviation Organization

6. International Fund for Agricultural Development

On 25 August 2016, the International Fund for Agricultural Development entered into a host country agreement with Haiti. Entry into force of the agreement is pending ratification by the Member State.

7. United Nations Industrial Development Organization

(*a*) Memorandum of understanding between UNIDO and Ulsan Metropolitan city on the convening of the fourth Green Industry Conference in Ulsan, the Republic of Korea, signed on 22 and 27 April 2016* and the letter from the Republic of Korea concerning the regulation of the privileges and immunities during the Conference

"Organization of the Conference

3. The privileges and immunities of UNIDO, its officials, experts and all other participants to the Conference will be regulated in a separate instrument with the Government of Republic of Korea.

[…]

Letter dated 27 May 2016 from the Republic of Korea concerning the regulation of the privileges and immunities during the Conference:

[…]

With reference to the Conference, I have the honour to confirm you, Excellency, that the Republic of Korea undertakes to apply, in all matters relating to the Meeting, the provisions of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, to which the Republic of Korea is a party, as well as in accordance with customary international law.

In addition, all persons designated by the UN and the Local Committee of this Conference to perform functions in connection with the Conference, other than those who are covered by the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, will be granted necessary facilities for the independent exercise of their functions in connection with the meeting subject to the laws and regulations of Korea."

(*b*) Agreement between UNIDO and the World Bank regarding the Standard Form of Agreement for Technical Assistance by UNIDO, signed on 7 June 2016**

"Agreement for Provision of Technical Assistance

Form of Agreement

6. This Agreement shall be interpreted in a manner that ensures it is consistent with the provisions of the Basic Agreement and the provisions of the 1947 Convention on the

* Entered into force on 27 April 2016.

** Entered into force on 7 June 2016.

Privileges and Immunities of the Specialized Agencies, provided, however, that if [name of country] has not acceded to said Convention in respect of UNIDO, the Government agrees to apply to UNIDO the provisions of the 1946 Convention on the Privileges and Immunities of the United Nations.

7. Nothing contained 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 UN Partner, under the General Convention, the Basic Agreement, the 1947 Convention on the Privileges and Immunities of the Specialized Agencies or otherwise."

(*c*) Trust Fund agreement between UNIDO and the Government of Australia regarding the implementation of a project entitled "Private Financing Advisory Network", signed on 4 November 2016*

"Annex A—Project document

8. Legal context

It is expected that each set of activities to be implemented in the target countries will be governed by the provisions of the Standard Basic Cooperation Agreement concluded between the Government of the recipient country concerned and UNIDO or—in the absence of such an agreement—by one of the following: (i) the Standard Basic Assistance Agreement concluded between the recipient country and UNDP, (ii) the Technical Assistance Agreements concluded between the recipient country and the United Nations and specialized agencies, or (iii) the Basic Terms and Conditions Governing UNIDO Projects."

(*d*) Memorandum of understanding between UNIDO and the Ministry of Foreign Affairs and International Cooperation of the Republic of Italy regarding the implementation of a project entitled "Phase 2 (extension) of the technical assistance project for the up-grading of the Ethiopian leather and leather products industry", signed on 23 November 2016**

"Article XII

Nothing in the Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party by its constituent documents, international agreements or international law;"

* Entered into force on 4 November 2016.

** Entered into force on 23 November 2016.

(e) Program contribution agreement between UNIDO and the United States Agency for International Development (USAID), United States of America regarding the implementation of a project entitled "Tackling unemployment in Tunisia", signed on 30 September and 3 October 2016*

"Attachment 3—Mandatory Standard Provisions

II. Required as applicable Standard Provisions for Cost-Type Awards to Public International Organizations (PIOs)

1. Reporting of Foreign Taxes (UN) (April 2011)

The recipient is not subject to taxation of activities implemented under the award based on its privileges and immunities as a public international organization (PIO). However, should it be obligated to pay value-added taxes or customs duties related to the award, the recipient must notify the USAID Agreement Officer's Representative (AOR)."

8. Organization for the Prohibition of Chemical Weapons

In 2016, the Agreement between the Organization for the Prohibition of Chemical Weapons and Hungary on the Privileges and Immunities of the OPCW entered into force on 25 May 2016.**

9. International Criminal Court

(*a*) Rome Statute of the International Criminal Court***

On 3 March 2016, El Salvador acceded to the Rome Statute of the International Criminal Court ("Rome Statute").

(*b*) Ratification/Acceptance of amendments to the Rome Statute

(i) *Amendment to article 8 of the Rome Statute*

Chile, El Salvador and the former Yugoslav Republic of Macedonia ratified the amendment to article 8 of the Rome Statute on 23 September, 3 March and 1 March 2016, respectively.**** The Netherlands accepted the amendment to article 8 of the Rome Statute on 23 September 2016.*****

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* Entered into force on 30 September 2016.

** The text of the agreement is not reproduced in this volume. For more information, see https://www.opcw.org/resources/opcw-agreements.

*** United Nations, *Treaty Series*, vol. 2187, p. 3.

**** The amendment entered into force in accordance with article 121(5) of the Rome Statute on 26 September 2012.

***** United Nations, *Treaty Series*, vol. 2868, p. 195.

(ii) *Amendments on the crime of aggression to the Rome Statute of the International Criminal Court*

Chile, El Salvador, Iceland, Palestine and the former Yugoslav Republic of Macedonia ratified the amendments to the Rome Statute on the crime of aggression on 23 September, 3 March, 17 and 26 June and 1 March 2016, respectively. The Netherlands accepted the amendments on the crime of aggression to the Rome Statute on 23 September 2016.*

(iii) *Amendment to article 124 of the Rome Statute*

Finland, Norway and Slovakia ratified the amendment to article 124 of the Rome Statute on 23 September, 1 July and 28 October 2016, respectively.**

(*c*) Agreement on the Privileges and Immunities of the ICC

On 8 April 2016, Samoa acceded to the Agreement on the Privileges and Immunities of the International Criminal Court.***

* United Nations, *Treaty Series*, vol. 2922, p.199.

** In accordance with article 121(4) of the Rome Statute, the amendment has not yet entered into force.

*** United Nations, *Treaty Series*, vol. 2271, p. 3.

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 2016, the number of Member States of the United Nations was 193.

2. Peace and Security

(*a*) Peacekeeping missions and operations[1]

(i) *Peacekeeping missions and operations established in 2016*

There were no peacekeeping missions or operations established in 2016.

(ii) *Changes in the mandate and/or extensions of time limits of ongoing peacekeeping operations or missions in 2016*

a. Cyprus

The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established by Security Council resolution 186 (1964) of 4 March 1964.[2] The Security Council decided to extend the mandate of UNFICYP by resolutions 2263 (2016) of 28 of January of 2016 and 2300 (2016) of 26 of July of 2016, until 31 July 2016 and 31 of January of 2017, respectively. In resolution 2263 (2016), the Security Council, *inter alia*, decided to increase force levels to 888.

b. Syrian Arab Republic and Israel

The United Nations Disengagement Observer Force (UNDOF) was established by Security Council resolution 350 (1974) of 31 March 1974.[3] The Security Council renewed

[1] The missions and operations are listed in chronological order according to their date of establishment.

[2] For more information about UNFICYP, see https://unficyp.unmissions.org and https://peacekeeping.un.org/en/mission/unficyp. See also the reports of the Secretary-General on the United Nations operation in Cyprus (S/2016/598, S/2017/20 and S/2017/586).

[3] For more information on UNDOF, see https://undof.unmissions.org and https://peacekeeping.un.org/en/mission/undof. See also the reports of the Secretary-General on the United Nations Disengagement

the mandate of UNDOF by resolutions 2294 (2016) of 29 June 2016 and 2330 (2016) of 19 December 2016, until 31 December 2016 and 30 June 2017, respectively.

c. Lebanon

The United Nations Interim Force in Lebanon (UNIFIL) was established by Security Council resolutions 425 (1978) and 426 (1978) of 19 March 1978.[4] Following a request by the Lebanese Foreign Minister, presented in a letter dated 25 July 2016 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.[5] The Security Council renewed the mandate of UNIFIL by resolution 2305 (2016) of 30 August 2016, until 31 August 2017.

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.[6] By resolution 2285 (2016) of 29 April 2016, the Security Council decided to extend the mandate of MINURSO until 30 April 2017.

e. Democratic Republic of the Congo

The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was established by Security Council resolution 1279 (1999) of 30 November 1999. As of 1 July 2010, MONUC was renamed United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).[7]

Acting under Chapter VII of the Charter of the United Nations, the Security Council, by its resolution 2277 (2016) of 30 March 2016, extended the mandate of MONUSCO, including, on an exceptional basis and without creating a precedent or any prejudice to the agreed principles of peacekeeping, its Intervention Brigade, until 31 March 2017. The

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Observer Force (UNDOF) (S/2016/242, S/2016/520, S/2016/803, S/2016/1037 and S/2017/230).

[4] For more information on UNIFIL see https://peacekeeping.un.org/en/mission/unifil and https://unifil.unmissions.org. See also the twenty-third semi-annual report of the Secretary-General to the Security Council on the implementation of Security Council resolution 1559 (2004) (S/2016/366), and twenty-fourth semi-annual report of the Secretary-General to the Security Council on the implementation of Security Council resolution 1559 (2004) (S/2016/882), the reports of the Secretary-General on the implementation of Security Council resolution 1701 (2006) (S/2016/189, S/2016/572, S/2016/931 and S/2017/201).

[5] Letter dated 3 August 2016 from the Secretary-General addressed to the President of the Security Council (S/2016/681).

[6] For more information about MINURSO, see https://peacekeeping.un.org/en/mission/minurso and https://minurso.unmissions.org. See also the reports of the Secretary-General on the situation concerning Western Sahara (S/2016/355 and S/2017/307).

[7] For more information about MONUSCO, see https://peacekeeping.un.org/en/mission/monusco and the reports of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (S/2016/233, S/2016/579, S/2016/833 and S/2016/1130). See also the reports of the Secretary-General on the implementation of the Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region (S/2016/232 and S/2016/840).

Security Council further decided that the mandate of MONUSCO should include, with priority, tasks concerning: (*a*) protection of civilians; (*b*) political situation; (*c*) stabilisation; and (*d*) protection of the United Nations. Further, the Security Council authorized MONUSCO to use its capacities for essential tasks concerning (*a*) Security Sector Reform (SSR); (*b*) arms embargo; and (*c*) mining activities.

f. Liberia[8]

The United Nations Mission in Liberia (UNMIL) was established by Security Council resolution 1509 (2003) of 19 September 2003.[9]

By resolution 2308 (2016) of 14 September 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of UNMIL as set out in paragraphs 10 and 16 of resolution 2239 (2015) until 31 December 2016.

By resolution 2333 (2016) of 23 December 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of UNMIL as set out in paragraph 11 of the resolution 2239 (2015) for a final period until 30 March 2018, and requested the Secretary-General to complete by 30 April 2018 the withdrawal of all uniformed and civilian UNMIL components, other than those required to complete the Mission's liquidation. In this respect, it decided that until 30 March 2018 the mandate of UNMIL should be: (*a*) protection of civilians; (*b*) reform of justice and security institutions; (*c*) human rights promotion and protection; (*d*) public information; and (*e*) protection of United Nations personnel.

g. Côte d'Ivoire[10]

The United Nations Operation in Côte d'Ivoire (UNOCI) was established by Security Council resolution 1528 (2004) of 27 February 2004.[11] By resolution 2260 (2016) of 20 January 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to decrease the authorized ceiling of UNOCI's military component from 5,437 to 4,000 military personnel by 31 March 2016.

By resolution 2284 (2016) of 28 April 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, endorsed the Secretary-General's withdrawal plan, as recommended in his special report of 31 March 2016 (S/2016/297), and requested the Secretary-General to implement this plan.

In the same resolution, the Security Council decided to extend the mandate of UNOCI for a final period until 30 June 2017. In this regard, it decided that the mandate of UNOCI should be: (*a*) protection of civilians; (*b*) political support; (*c*) support to security

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[8] See subsection (*f*)(ii) below on sanctions as concerning Liberia.

[9] For more information about UNMIL, see https://unmil.unmissions.org. See also the thirty-first progress report of the Secretary-General on the United Nations Mission in Liberia (S/2016/169), the thirty-second progress report of the Secretary-General on the United Nations Mission in Liberia (S/2016/706), and the special report of the Secretary-General on the United Nations Mission in Liberia (S/2016/968).

[10] See subsection (*f*)(iv) below on sanctions as concerning Côte d'Ivoire.

[11] For more information about UNOCI, see https://onuci.unmissions.org/en. See also the special report of the Secretary-General on the United Nations Operation in Côte d'Ivoire (S/2016/297).

institutions and border-related challenges; (*d*) support for compliance with international humanitarian and human rights law; (*e*) support for humanitarian assistance; (*f*) public information; and (*g*) protection of United Nations personnel.

The Security Council decided that from 1 May to 30 June 2017 the mandate of UNOCI should be to complete the Mission's closure as described in paragraph 61 of the special report of the Secretary-General (S/2016/297) and to finalize the transition process to the Government of Côte d'Ivoire and the United Nations Country Team (UNCT), including through any remaining political facilitation that may be required.

Also in the same resolution, the Security Council decided to decrease UNOCI's military component as outlined in paragraph 55 of the special report of the Secretary-General (S/2016/297), with the view to its complete withdrawal by 30 April 2017, and to decrease UNOCI's police component as outlined in paragraphs 58 and 59 of the special report of the Secretary-General (S/2016/297), with the view to its complete withdrawal by 30 April 2017.

h. Haiti

The United Nations Stabilization Mission in Haiti (MINUSTAH) was established by Security Council resolution 1542 (2004) of 30 April 2004.[12] By resolution 2313 (2016) of 13 October 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of MINUSTAH as contained in prior resolutions[13] until 15 April 2017, affirming its intention to consider possible withdrawal of MINUSTAH and transition to a future United Nations presence by that date. The Security Council also decided that MINUSTAH would continue to prepare for its transition, including through the development of a Transition Plan and the focused implementation of the Mission's Consolidation Plan.

i. Republic of the Sudan (Darfur)[14]

The African Union-United Nations Hybrid Operation in Darfur (UNAMID) was established and authorized by Security Council resolution 1769 (2007) of 31 July 2007.[15] By resolution 2296 (2016) of 29 June 2016, the Security Council decided to extend the mandate of UNAMID until 30 June 2017.

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[12] For more information about MINUSTAH, see https://minustah.unmissions.org and https://peacekeeping.un.org/en/mission/minustah. See also the reports of the Secretary-General on the United Nations Stabilization Mission in Haiti (S/2016/225 and S/2016/753).

[13] See resolutions 1542 (2004), 1608 (2005), 1702 (2006), 1743 (2007), 1780 (2007), 1840 (2008), 1892 (2009), 1908 (2010), 1927 (2010), 1944 (2010), 2012 (2011), 2070 (2012), 2119 (2013), 2180 (2014) and 2243 (2015).

[14] See subsection (*f*)(v) below on sanctions concerning the Republic of the Sudan.

[15] For more information on UNAMID, see https://unamid.unmissions.org and https://peacekeeping.un.org/en/mission/unamid. See also the reports of the Secretary-General on UNAMID (S/2016/268, S/2016/587, S/2016/812 and S/2016/1109) and the special report of the Secretary-General and the Chairperson of the African Union Commission on the African Union-United Nations Hybrid Operation in Darfur (S/2016/510).

j. Republic of the Sudan and Republic of South Sudan (Abyei)

The United Nations Interim Security Force for Abyei (UNISFA) was established by Security Council resolution 1990 (2011) of 27 June 2011.[16] By resolution 2287 (2016) of 12 May 2016 and resolution 2318 (2016) of 15 November 2016, the Security Council decided to extend the mandate of UNISFA, as set out in paragraph 2 of resolution 1990 (2011) and modified by resolution 2024 (2011) and paragraph 1 of resolution 2075 (2012), until 15 November 2016 and 15 May 2017, respectively.

Acting under Chapter VII of the Charter of the United Nations, the Security Council, in resolutions 2287 (2016) and 2318 (2016), also decided to extend the tasks of UNISFA as set out in paragraph 3 of resolution 1990 (2011) until 15 November 2016 and 15 May 2017, respectively, and determined that, for the purposes of paragraph 1 of resolution 2024 (2011), support to the operational activities of the Joint Border Verification and Monitoring Mechanism (JBVMM) should include support to the *Ad Hoc* Committees, as appropriate when so requested by consensual decisions of these mechanisms, within UNISFA's operational area and existing capabilities.

k. Republic of South Sudan

The United Nations Mission in the Republic of South Sudan (UNMISS) was established by Security Council resolution 1996 (2011) of 8 July 2011.[17] By resolutions 2302 (2016), 2304 (2016), and 2327 (2016) and acting under Chapter VII of the Charter of the United Nations, the Security Council decided to extend the mandate of UNMISS until 12 August 2016, 15 December 2016 and 15 December 2017, respectively, and authorized UNMISS to use all necessary means to carry out its tasks.

The Security Council, by resolution 2327 (2016), further decided, *inter alia*, to increase the overall force levels of UNMISS by maintaining a troop ceiling of 17,000 troops, including 4,000 for the Regional Protection Force, and increasing the police ceiling to 2,101 police personnel, including individual police officers, formed police units and 78 corrections officers.

By the same resolution, the Security Council authorized UNMISS to use all necessary means to perform the tasks specified in the resolution and associated with its mandate, which included (*a*) protection of civilians; (*b*) monitoring, and investigating human rights; (*c*) creating the conditions conducive to the delivery of humanitarian assistance; and (*d*) supporting the implementation of the Agreement on the Resolution of the Conflict in the Republic of South Sudan.

l. Mali

The United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) was established by Security Council resolution 2100 of 25 April 2013.[18]

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[16] For more information on UNISFA see https://unisfa.unmissions.org. See also the reports of the Secretary-General on the situation in Abyei (S/2016/353 and S/2016/864).

[17] For more information about UNMISS, see https://unmiss.unmissions.org. See also the reports of the Secretary-General on South Sudan (S/2016/138, S/2016/341, S/2016/552, S/2016/950).

[18] For more information on MINUSMA, see https://minusma.unmissions.org/en. See also the reports of the Secretary-General (S/2016/281, S/2016/498, S/2016/819 and S/2016/1137).

By resolution 2295 (2016) of 29 June 2016 and acting under Chapter VII of the Charter of the United Nations, the Security Council decided to extend the mandate of MINUSMA until 30 June 2017, while increasing the force levels of MINUSMA up to a ceiling of 13,289 military personnel and 1,920 police personnel, and authorized MINUSMA to take all necessary means to carry out its mandate, within its capabilities and its areas of deployment.

m. Central African Republic

The United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) was established by Security Council resolution 2149 (2014) of 10 April 2014.[19] By resolutions 2281 (2016) of 26 April 2016 and 2301 (2016) of 26 July 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of MINUSCA until 31 July 2016 and 15 November 2017, respectively, and authorized MINUSCA to take all necessary means to carry out its mandate within its capabilities and areas of deployment.

(iii) *Other ongoing peacekeeping operations or missions*

a. 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 1948 respectively, in order to supervise, in the State of Jammu and Kashmir, the ceasefire between India and Pakistan. Following the India-Pakistan hostilities at the end of 1971 and a subsequent ceasefire of 17 December that year, the tasks of UNMOGIP have been to observe, to the extent possible, developments pertaining to the strict observance of the ceasefire of 17 December 1971 and to report thereon to the Secretary-General.[20] UNMOGIP continued to operate in 2016.

b. Middle East

The United Nations Truce Supervision Organization (UNTSO) was established by Security Council resolution 50 (1948) on 29 May 1948 in order to supervise the observation of the truce in Palestine.[21] UNTSO continued to operate in 2016.

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 conditions for a peace and normal life for all inhabitants of Kosovo and advance regional stability in the western Balkans.[22] UNMIK continued to operate in 2016.

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[19] For more information on MINUSCA, see https://peacekeeping.un.org/en/mission/minusca. See also the reports of the Secretary-General on the situation in the Central African Republic (S/2016/305 and S/2016/824) and the Special Report on the strategic review of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (S/2016/565).

[20] For more information about UNMOGIP, see https://unmogip.unmissions.org.

[21] For more information on UNTSO, see https://untso.unmissions.org.

[22] For more information about UNMIK, see https://unmik.unmissions.org. See also the report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo for the

(iv) *Peacekeeping missions or operations concluded in 2016*

There were no peacekeeping missions or operations that were concluded in 2016.

(*b*) Political and peacebuilding missions[23]

(i) *Political and peacebuilding missions established in 2016*

a. Colombia

By resolution 2261 (2016) of 25 January 2016, the Security Council decided to establish a political mission to Colombia to participate, for a period of 12 months, as the international component and coordinator in the tripartite mechanism to monitor and verify the definitive bilateral ceasefire and cessation of hostilities between the Government of Colombia and the FARC-EP, foreseen for the Final Peace Agreement between the Government of Colombia and the FARC-EP.[24] It further requested the Secretary-General to present detailed recommendations to the Security Council for its consideration and approval regarding the size and operational aspects and mandate of the Mission. By resolution 2307 (2016) of 13 September 2016, the Security Council subsequently approved the recommendations submitted by the Secretary-General in report S/2016/729 regarding the size, operational aspects and mandate of the Mission.

b. West Africa and the Sahel

The United Nations Office for West Africa (UNOWA), originally established by the Secretary-General in 2002,[25] with subsequent extensions of its mandate in 2004,[26] 2007[27] and 2010,[28] was merged with the Office of the Special Envoy for the Sahel (OSES), with a view to maximizing synergies by ensuring a unified management and structure, therefore becoming the new United Nations Office for West Africa and the Sahel (UNOWAS).[29]

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period of 16 October 2015 to 15 January 2016 (S/2016/99), for the period from 16 January to 15 April 2016 (S/2016/407), for the period from 16 April to 15 July 2016 (S/2016/666) and for the period 16 July to 15 October 2016 (S/2016/901).

[23] The political and peacebuilding missions are listed in chronological order according to their date of establishment.

[24] For more information about the United Nations Mission to Colombia see https://colombia.unmissions.org/en.

[25] Exchange of letters between the Secretary-General and the President of the Security Council (S/2001/1128 and S/2001/1129).

[26] Exchange of letters between the Secretary-General and the President of the Security Council (S/2004/797 and S/2004/858).

[27] Exchange of letters between the Secretary-General and the President of the Security Council (S/2007/753 and S/2007/754).

[28] Exchange of letters between the Secretary-General and the President of the Security Council (S/2010/660 and S/2010/661).

[29] Letter dated 28 January 2016 from the President of the Security Council addressed to the Secretary-General (S/2016/89). See also exchange of letters between the Secretary-General and the President of the Security Council (S/2016/1128 and S/2016/1129). For more information about UNOWAS,

(ii) *Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions in 2016*

a. Afghanistan

The United Nations Assistance Mission in Afghanistan (UNAMA) was established by Security Council resolution 1401 (2002) of 28 March 2002.[30]

On 15 March 2016, the Security Council decided, by resolution 2274 (2016), to extend the mandate of UNAMA until 17 March 2017. The Security Council recognized that the renewed mandate of UNAMA took full account of the transition process and was in support of Afghanistan's full assumption of leadership and ownership in the security, governance and development areas, consistent with the understandings reached between Afghanistan and the international community in the London, Kabul, Bonn and Tokyo Conferences and the Lisbon, Chicago and Wales Summits.[31] The Security Council further decided that UNAMA would continue to focus on, *inter alia*: (*a*) promoting, as co-chair of the Joint Coordination and Monitoring Board (JCMB), more coherent support by the international community to the Afghan Government's development and governance priorities; (*b*) supporting, at the request of the Afghan authorities, the organization of future Afghan elections, as well as to strengthen, in support of the Government of Afghanistan's efforts, including electoral reform effort; (*c*) providing outreach as well as good offices to support, if requested by and in close consultation with the government of Afghanistan, the Afghan-led and Afghan-owned peace process; (*d*) continuing, with the support of the Office of the United Nations High Commissioner for Human Rights, to cooperate with and strengthen the capacity of the Afghanistan Independent Human Rights Commission (AIHRC).

b. Iraq

The United Nations Assistance Mission for Iraq (UNAMI) was established by Security Council resolution 1500 (2003) of 14 August 2003.[32] By resolution 2299 (2016) of 25 July 2016, the Security Council decided to extend the mandate of UNAMI until 31 July 2017. It decided further that the Special Representative of the Secretary-General and UNAMI, at the request of the Government of Iraq, and taking into account the letter

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see https://unowas.unmissions.org. See also the reports of the Secretary-General on the activities of the United Nations Office for West Africa (S/2016/566 and S/2016/1072).

[30] For more information about UNAMA, see https://unama.unmissions.org. See also the reports of the Secretary-General on the situation in Afghanistan and its implications for international peace and security (A/70/775–S/2016/218; A/70/924–S/2016/532; A/70/1033–S/2016/768 and Corr.1; A/71/682–S/2016/1049).

[31] See letter dated 6 December 2011 from the Permanent Representatives of Afghanistan and Germany to the United Nations addressed to the Secretary-General (A/66/597–S/2011/762). The Security Council requested UNAMA to assist the Government of Afghanistan on its way towards ensuring full Afghan leadership and ownership, as defined by the Kabul Process.

[32] For more information about the activities of UNAMI, see https://www.uniraq.org. See also the reports of the Secretary-General pursuant to paragraph 4 of Security Council resolution 2107(2013), namely S/2016/87, S/2016/372, S/2016/590, S/2016/885; and paragraph 7 of resolution 2233 (2015), namely S/2016/77, S/2016/396, S/2016/592. See also the report of the Secretary-General pursuant to resolution 2299 (2016) (S/2016/897).

from the Minister of Foreign Affairs of Iraq to the Secretary-General (S/2016/632), should continue to pursue their mandate as stipulated in resolution 2233 (2015).

c. Guinea Bissau

The United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) was established by Security Council resolution 1876 (2009) of 26 June 2009[33]. On 26 February 2016, the Security Council, by resolution 2267 (2016), extended the mandate of UNIOGBIS until 28 February 2017.

d. Libya[34]

The United Nations Support Mission in Libya (UNSMIL) was established by resolution 2009 (2011) of 16 September 2011 under Chapter VII of the Charter of the United Nations.[35] By resolution 2291 (2016) of 13 June 2016 and resolution 2323 (2016) of 13 December 2016, the Security Council decided to extend the mandate of UNSMIL, until 15 December 2016 and 15 September 2017, respectively.

e. Somalia[36]

The United Nations Assistance Mission in Somalia (UNSOM) was established by Security Council resolution 2102 (2013) of 2 May 2013 under the leadership of a Special Representative of the Secretary-General.[37] By resolution 2275 (2016) of 24 March 2016, the Security Council decided to extend the mandate of UNSOM until 31 March 2017.

(iii) *Other ongoing political and peacebuilding missions in 2016*

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,[38] continued to operate throughout 2016.

b. Lebanon

The Office of the United Nations Special Coordinator for Lebanon (UNSCOL) was established in 2000 as the Personal Representative of the Secretary-General for Southern

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[33] For more information about UNIOGBIS, see https://uniogbis.unmissions.org/en. See also the report of the Secretary-General on Guinea-Bissau (S/2016/141) and the report of the special rapporteur on the independence of judges and lawyers (A/HRC/32/34/Add.1).

[34] See subsection (*f*)(viii) below on sanctions concerning Libya.

[35] For more information on UNSMIL see https://unsmil.unmissions.org/security-council-resolutions-and-statements. See also the Reports of the Secretary-General (S/2016/182, S/2016/452 and S/2016/1011).

[36] See subsection (*f*)(i) below on sanctions concerning Somalia.

[37] For more information on UNSOM, see https://unsom.unmissions.org. See also the reports of the Secretary-General on Somalia (S/2016/27, S/2016/430 and S/2016/763).

[38] Exchange of letters between the Secretary-General and the President of the Security Council (S/1999/983 and S/1999/984).

Lebanon.[39] The mandate was expanded to include coordination of United Nations political activities for the whole of Lebanon and the title changed to Personal Representative for Lebanon in 2005,[40] to Special Coordinator for Lebanon in 2007,[41] respectively. UNSCOL continued to operate throughout 2016.[42]

c. Central Asia

The United Nations Regional Centre for Preventive Diplomacy for Central Asia (UNRCCA) was established by the Secretary-General on 10 December 2007 by a letter dated 7 May 2007 from the Secretary-General to the President of the Security Council.[43] UNRCCA continued to function throughout 2016.[44]

d. Central African Region

The United Nations Regional Office for Central Africa (UNOCA),[45] located in Libreville, Gabon, was established by an exchange of letters in August 2010 between the Secretary-General and the Security Council.[46] UNOCA began its operations on 2 March 2011 and continued its operations throughout 2016 after its mandate had been extended in 2015 until 31 of August 2018.[47]

e. African Union

The United Nations Office to the African Union (UNOAU) was established by the General Assembly in resolution 64/288 of 24 June 2010, *inter alia* to enhance the partnership between the United Nations and the African Union. UNOAU continued to function throughout 2016.[48]

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[39] S/2000/718.

[40] Letter dated 17 November 2005 from the Secretary-General to the President of the Security Council (S/2005/726).

[41] Letter dated 8 February 2007 from the Secretary-General to the President of the Security Council (S/2007/85).

[42] For more information on the activities of the Office of the United Nations Special Coordinator for Lebanon (UNSCOL), see http://unscol.unmissions.org.

[43] S/2007/279.

[44] For more information about UNRCCA, see https://unrcca.unmissions.org.

[45] For more information about UNOCA, see https://unoca.unmissions.org.

[46] 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). See also the reports of the Secretary-General on the situation in Central Africa and the activities of the United Nations Regional Office for Central Africa (S/2016/482 and S/2016/996).

[47] Exchange of letters between the Secretary-General and the President of the Security Council (S/2015/554 and S/2015/555).

[48] For more information on UNOAU, see https://unoau.unmissions.org.

(iv) *Political and peacebuilding missions concluded in 2016*

a. Sahel

The Office of the Special Envoy for the Sahel (OSES) was merged with the United Nations Office for West Africa (UNOWA), into the newly created United Nations Office for West Africa and the Sahel (UNOWAS)[49] and ceased its functions as an autonomous entity.

(*c*) Other bodies

(i) *Cameroon-Nigeria Mixed Commission*

On 15 November 2002, the Secretary-General established the Cameroon-Nigeria Mixed Commission (CNMC), 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[50] on the Cameroon-Nigeria boundary dispute.[51] 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. The Mixed Commission continued its work in 2016.

(ii) *Monitoring mechanism for Syria*

The United Nations monitoring mechanism for Syria was established by Security Council resolution 2165 of 14 July 2014 to monitor, under the authority of the United Nations Secretary-General and with the consent of the relevant neighbouring countries of Syria, the loading of all humanitarian relief consignments of the United Nations humanitarian agencies and their implementing partners at the relevant United Nations facilities.[52] By resolution 2332 (2016) of 21 December 2016, the Security Council decided to renew its decisions in paragraphs 2 and 3 of Security Council resolution 2165 (2014) concerning humanitarian assistance for a further period of twelve months, until 10 January 2018.

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[49] Letter dated 28 January 2016 from the President of the Security Council addressed to the Secretary-General (S/2016/89). See also exchange of letters between the Secretary-General and the President of the Security Council (S/2016/1128 and S/2016/1129). For more information about UNOWAS, see https://unowas.unmissions.org. See also the reports of the Secretary-General on the activities of the United Nations Office for West Africa (S/2016/566 and S/2016/1072).

[50] *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea Intervening)*, Judgment, 10 October 2002.

[51] For more information about CNMC, see https://unowas.unmissions.org/cameroon-nigeria-mixed-commission/.

[52] For more information on the Monitoring Mechanism, see the Report of the Secretary-General on the revised estimates relating to the programme budget for the biennium 2016-2017 under sections 27, Humanitarian assistance, and 36, Staff assessment, United Nations Monitoring Mechanism (A/70/726).

(iii) *Organization for the Prohibition of Chemical Weapons—United Nations Joint Investigative Mechanism*

The Organization for the Prohibition of Chemical Weapons—United Nations Joint Investigative Mechanism (OPCW-JIM) was established following Security Council resolution 2235 (2015) of 7 August 2015. The Security Council decided to renew its mandate, as set out in resolution 2235, by resolution 2314 (2016) of 31 October 2016 and resolution 2319 (2016) of 17 November 2016, until 18 November 2016 and for a further period of one year from the adoption of the second resolution, respectively, with a possibility of further extension and update by the Security Council if necessary.

(*d*) Missions of the Security Council

(i) *Burundi and Ethiopia*

In a letter dated 20 January 2016, the President of the Security Council informed the Secretary-General that the Council had decided to send a mission to Burundi and Ethiopia, outlining in an annex to the letter the mission's terms of reference.[53]

The mission to Burundi would, *inter alia*, continue to address the growing concerns expressed in the presidential statement of 28 October 2015 (S/PRST/2015/18) and the press statement of 19 December 2015 (SC/12174), namely the concerns about the growing insecurity and the continued rise in violence in Burundi, as well as the increased cases of human rights violations and abuses, including those involving extra-judicial killings, acts of torture and other cruel, inhuman and/or degrading treatment, arbitrary arrests and illegal detention.

In Ethiopia, the members of the Security Council intended to hold an informal dialogue with the African Union Peace and Security Council to strengthen partnership and enhance cooperation between the African Union and the United Nations, in accordance with Security Council resolution 2033 (2012), and to exchange views on the situations in Burundi and Somalia.

(ii) *West Africa*

In a letter dated 10 February 2016, the President of the Security Council informed the Secretary-General that the Council had decided to send a mission to West Africa (Mali, Guinea-Bissau and Senegal), outlining in an annex to the letter the mission's terms of reference.[54]

The mission to Mali would, *inter alia,* reiterate the Security Council's call for urgent and concrete progress in the implementation of the Agreement on Peace and Reconciliation in Mali and to assess the increased level of insecurity, including in central and southern Mali. The mission was further aimed at assessing progress in the implementation of Security Council resolution 2227 (2015), notably the supervision of the ceasefire arrangements, the provision of good offices and reconciliation support, stabilization and the protection of civilians, and the protection, safety and security of United Nations personnel,

[53] Letter dated 20 January 2016 from the President of the Security Council addressed to the Secretary-General (S/2016/55).

[54] Letter dated 3 March 2016 from the President of the Security Council addressed to the Secretary-General (S/2016/215).

in addition to the progress and challenges in the deployment of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).

The purpose of the mission to Guinea-Bissau was, *inter alia,* to meet and gather first-hand information from the primary State organs and to deliver key messages to national stakeholders. The mission was also aimed at assessing the situation on the ground in a context of political tensions that had intensified since August 2015, with the dismissal of the first Government following the general elections of 2014.

The mission to Senegal, *inter alia,* aimed at exchanging information on the political and security situation in West Africa and in the Sahel and to be briefed on the level of implementation of the United Nations Integrated Strategy for the Sahel. The mission was further aimed at assessing the implementation of the decision to merge the United Nations Office for West Africa (UNOWA) and the Office of the Special Envoy of the Secretary-General for the Sahel (OSES) into the United Nations Office for West Africa and the Sahel (UNOWAS).[55]

(iii) *Horn of Africa*

In a letter dated 17 May 2016, the President of the Security Council informed the Secretary-General that the Council had decided to send a mission to the Horn of Africa, outlining in an annex to the letter the mission's terms of reference.[56]

The mission to Somalia, *inter alia,* aimed at underlining the support of the Security Council for the peace and reconciliation process, the United Nations Assistance Mission in Somalia (UNSOM) and the United Nations Support Office in Somalia (UNSOS); receiving updates on the progress of the military campaign against Al-Shabaab by the Somali National Army and AMISOM as well as the action plan of the Government of Somalia to end sexual violence; and reaffirming to the Government of Somalia the expectation of the Security Council that elections would be held in August 2016, and that the road map towards universal elections in 2020 will be followed.

The mission to Kenya, *inter alia*, aimed at engaging with the Government of Kenya on regional issues of interest, including AMISOM and refugees, and with United Nations entities on humanitarian needs in Somalia, the effect of El Niño on Somalia and the region, the efforts to address the drought in Puntland and Somaliland and the situation with regard to refugees and internally displaced persons.

(iv) *South Sudan and Addis Ababa*

In a letter dated 1 September 2016, the President of the Security Council informed the Secretary-General that the Council had decided to send a mission to South Sudan outlining in an annex to the letter the mission's terms of reference.[57]

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[55] See S/2016/89. For more information, see the report of the Security Council mission to Mali, Guinea-Bissau and Senegal (S/2016/511). For more information about UNOWAS, see https://unowas.unmissions.org.

[56] Letter dated 17 May 2016 from the President of the Security Council addressed to the Secretary-General (S/2016/456).

[57] Letter dated 1 September 2016 from the President of the Security Council addressed to the Secretary-General (S/2016/757).

The mission to South Sudan, reinforcing the messages contained in Security Council resolutions 2252 (2015) and 2304 (2016), the presidential statements of 17 March (S/PRST/2016/1) and 7 April 2016 (S/PRST/2016/3), and the press statements of 4 May (SC/12350), 1 July (SC/12431), 9 July (SC/12440) and 10 July 2016 (SC/12441), was concerned with the political process in South Sudan, the security situation, as well as the mandate and forces of the United Nations Mission in South Sudan (UNMISS).

The mission to Addis Ababa had the objective to engage with regional partners on the political and security dimensions of the crisis in South Sudan and consult with them on the deployment of the UNMISS Regional Protection Force. It also aimed at receiving a briefing on the efforts of the African Union to establish the Hybrid Court for South Sudan and to support and encourage continued engagement by regional partners to address the political and security crisis in South Sudan.

(v) *Democratic Republic of the Congo and Angola*

In a letter dated 9 November 2016, the President of the Security Council informed the Secretary-General that the Council had decided to send a mission to Congo and Angola, outlining in an annex to the letter the mission's terms of reference.[58]

The mission to the Democratic Republic of the Congo operated within the framework provided by resolution 2277 (2016), the press statements of 15 July (SC/12449), 16 August (SC/12477) and 21 September 2016 (SC/12528). It aimed at establishing a dialogue between the Security Council and the President of the Democratic Republic of the Congo, the Prime Minister and his Government, leaders of the political parties, both signatories and non-signatories of the 18 October political agreement resulting from the national dialogue, as well as civil society organizations and the leadership from the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), among others. The mission, *inter alia*, addressed concerns about the recent violence in the Democratic Republic of the Congo and called on the Government to take further military action, in accordance with international law, including international humanitarian law and international human rights law, as applicable, and with the support of MONUSCO in accordance with its mandate, to end the threat posed by the Allied Democratic Forces (ADF), the Democratic Forces for the Liberation of Rwanda (FDLR) and all other armed groups operating in the Democratic Republic of the Congo. In addition, the mission welcomed the efforts made by the Government of the Democratic Republic of the Congo to combat and prevent sexual violence in conflict, including progress made in the fight against impunity.

The mission to Angola, *inter alia*, aimed at holding talks with the President of Angola, José Eduardo dos Santos to assess the political and security developments in the Great Lakes Region, particularly in the Democratic Republic of the Congo. It also served the purpose of discussing the results of the Security Council's visit to the Democratic Republic of the Congo and to strengthen cooperation relations between the Angolan authorities and the United Nations, in particular the Security Council.

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[58] Letter dated 9 November 2016 from the President of the Security Council addressed to the Secretary-General (S/2016/948).

(*e*) Action of Member States authorized by the Security Council

(i) *Côte d'Ivoire*

French forces had initially been authorized, for a period of 12 months, by Security Council resolution 1528 (2004) of 27 February 2004 to use all necessary means in order to support UNOCI. By resolution 2284 (2016) of 28 April 2016, the Security Council decided to extend this authorization until 30 June 2017.

(ii) *Bosnia and Herzegovina*

The European Union Force Althea (EUFOR ALTHEA) was initially authorized by Security Council resolution 1575 (2004) of 22 November 2004.[59] By its resolution 2315 (2016) of 8 November 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, authorized Member States acting through or in cooperation with the European Union to establish for a further period of twelve months a multinational stabilization force (EUFOR ALTHEA). It also decided to renew the authorization provided by paragraph 11 of resolution 2183 (2014) for Member States acting through or in cooperation with NATO to continue to maintain a NATO Headquarters, both as a legal successor to the Stabilization Force in Bosnia and Herzegovina (SFOR) under unified command and control.

The Security Council further authorizes these Member States to take all necessary means to effect the implementation of and to ensure compliance with annexes 1-A and 2 of the Peace Agreement,[60] and to take all necessary measures to ensure compliance with the rules and procedures governing command and control of airspace over Bosnia and Herzegovina with respect to all civilian and military air traffic. Moreover, it authorized Member States to take all necessary means, at the request of either EUFOR ALTHEA or the NATO Headquarters, in defence of the EUFOR ALTHEA or NATO presence respectively, and to assist both organizations in carrying out their missions. It also recognized the right of both EUFOR ALTHEA and the NATO presence to take all necessary measures to defend themselves from attack or threat of attack.

(iii) *Somalia*

The African Union Mission in Somalia (AMISOM) was initially authorized by the Security Council, acting under Chapter VII of the Charter of the United Nations, in resolution 1744 (2007) of 20 February 2007.[61] By resolutions 2289 (2016) of 27 May 2016 and 2297 (2016) of 7 July 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to authorize the Member States of the African Union to maintain the deployment of AMISOM up to a maximum level of 22,126 uniformed personnel until

[59] For more information on the European Union military mission in Bosnia and Herzegovina (EUFOR), see: http://www.euforbih.org/eufor/index.php, and the reports of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina (S/2016/395 and S/2016/911).

[60] 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).

[61] For more information AMISOM, see: https://amisom-au.org.

8 July 2016 and 31 May 2017, respectively. It further decided in resolution 2297 (2016) that AMISOM should be authorized to take all necessary measures, in full compliance with participating States' obligations under international humanitarian law and international human rights law, and in full respect of the sovereignty, territorial integrity, political independence and unity of Somalia, to carry out its mandate.

(iv) *Central African Republic*

French forces had initially been authorized by the Security Council in resolution 2127 (2013) to take all necessary measures to support the African-led International Support Mission in the CAR (MISCA) and, by resolution 2149 (2014), to use all necessary means to provide operational support to elements of MINUSCA, from the commencement of the activities of MINUSCA until the end of its mandate. By resolution 2301 (2016) of 26 July 2016 and acting under Chapter VII of the Charter of the United Nations, the Security Council reiterated this authorization.

(v) *Mali*

French forces had initially been authorized by Security Council resolution 2164 (2014) of 25 June 2014 to use all necessary means to intervene in support of elements of MINUSMA when under imminent and serious threat upon request of the Secretary-General. By resolution 2295 (2016) of 29 June 2016, the Security Council decided to extend this authorization until the end of MINUSMA's mandate as authorized in the resolution.

(vi) *Syrian Arab Republic*

By resolution 2165 (2014) of 14 July 2014, the Security Council, underscoring the obligations of Member States under Article 25 of the Charter of the United Nations, authorized United Nations humanitarian agencies and their implementing partners to use routes across conflict lines and the border crossings of Bab al-Salam, Bab al-Hawa, Al Yarubiyah and Al-Ramtha, in addition to those already in use, in order to ensure that humanitarian assistance reaches people in need throughout Syria through the most direct routes, with notification to the Syrian authorities. In resolution 2332 (2016) of 21 December 2016, the Security Council, underscoring the obligations of Member States under Article 25 of the Charter of the United Nations, decided to renew the authorization for a further period of twelve months, until 10 January 2018.

(*f*) Sanctions imposed under Chapter VII of the Charter of the United Nations[62]

(i) *Somalia and Eritrea*

The Security Council Committee established pursuant to resolution 751 (1992) of 24 April 1992 concerning Somalia was mandated to oversee the general and complete arms embargo imposed by Security Council resolution 733 (1992) and to undertake the tasks set out by the Security Council resolutions 751 (1992), 1356 (2001) and 1844 (2008). Following the adoption of resolution 1907 (2009), which imposed a sanctions regime on Eritrea and expanded its mandate, the Committee decided on 26 February 2010 to change its name to "Security Council Committee pursuant to resolution 751 (1992) and 1907 (2009) concerning Somalia and Eritrea".[63] The Security Council Committee submitted, on 30 December 2016, a report on its work in 2016 to the Security Council.[64]

By resolution 2317 (2016), of 10 November 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, reaffirmed the existing arms embargo on Somalia and reiterated that it should not apply to deliveries of weapons, ammunition or military equipment or the provision of advice, assistance or training, intended solely for the development of the Security Forces of the Federal Government of Somalia, to provide security for the Somali people, except in relation to deliveries of the items set out in the annex of resolution 2111 (2013). It further decided that until 15 November 2017 and without prejudice to humanitarian assistance programmes conducted elsewhere, the measures imposed by paragraph 3 of resolution 1844 (2008) should not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia.[65]

By the same resolution, the Security Council reaffirmed the existing arms embargo on Eritrea as imposed by paragraphs 5 and 6 of resolution 1907 (2009) and decided to extend until 15 December 2017 the mandate of the Somalia and Eritrea Monitoring Group.[66]

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[62] The sanctions imposed under Chapter VII of the Charter of the United Nations are listed in chronological order according to the date of adoption of the respective Security Council resolutions. For more information about the sanction regimes established by the Security Council, see the Security Council's website relating to subsidiary organs at https://www.un.org/securitycouncil/sanctions/information.

[63] The expanded mandate of the Committee is delineated in paragraph 18 of resolution 1907 (2009), paragraph 13 of resolution 2023 (2011) and paragraph 23 of resolution 2036 (2012).

[64] Report of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea (S/2016/1121).

[65] See Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2244 (2015): Somalia (S/2016/919) and Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2244 (2015): Eritrea (S/2016/920).

[66] See Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2244 (2015): Somalia (S/2016/919) and Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2244 (2015): Eritrea (S/2016/920). See also the letter dated 24 February 2016 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council (S/2016/184).

(ii) *Liberia*

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 relevant Security Council resolutions, continued its operations until 25 May 2016. The Security Council Committee submitted, on 25 May 2016, a report on its work in the period from 1 January to 25 May 2016 to the Security Council.[67]

By resolution 2288 (2016) of 25 May 2016 and acting under Chapter VII of the Charter of the United Nations, the Security Council decided to terminate, with immediate effect, the measures on arms, previously imposed by paragraph 2 of resolution 1521 (2003) and subsequently modified, including in paragraph 2 (*b*) of resolution 2128 (2013). It further decided to dissolve, with immediate effect, the Committee established by paragraph 21 of resolution 1521 (2003) and the Panel of Experts established pursuant to paragraph 22 of resolution 1521 (2003), and subsequently modified and extended, including in paragraphs 3 and 4 of resolution 2237 (2015).

(iii) *Democratic Republic of the Congo*

The Security Council Committee established pursuant to resolution 1533 (2004) of 12 March 2004, to oversee the sanctions measures imposed by relevant Security Council resolutions, continued its operations in 2016 and submitted, on 27 December 2016, a report on its work in 2016 to the Security Council.[68]

By resolution 2293 (2016) of 23 June 2016 and acting under Chapter VII of the Charter of the United Nations, the Security Council decided, *inter alia*, to renew until 1 July 2017 the measures on arms imposed by paragraph 1 of resolution 1807 (2008). The Security Council also decided to renew, for the same period, the measures on transport imposed by paragraphs 6 and 8 of resolution 1807 (2008) and the financial and travel measures imposed by paragraphs 9 and 11 of resolution 1807 (2008).In the same resolution, the Security Council decided to extend until 1 August 2017 the mandate of the Group of Experts established pursuant to resolution 1533 (2004).[69]

(iv) *Côte d'Ivoire*

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 until 28 April 2016.

By resolution 2283 (2016) of 28 April 2016, the Security Council, acting under Chapter VII of the Charter of United Nations, decided to terminate, with immediate effect,

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[67] Report of the Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia (S/2016/479).

[68] Report of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo (S/2016/1086).

[69] For information on the appointment of members to the Group of Experts, see letter dated 14 July 2016 from the Secretary-General addressed to the President of the Security Council (S/2016/614).

the measures concerning arms and related materiel in paragraph 1 of resolution 2219 (2015), as well as the travel and financial measures imposed in paragraphs 9 to 12 of resolution 1572 (2004) and paragraph 12 of resolution 1975 (2011), as subsequently renewed, including in paragraph 12 of resolution 2219 (2015).

In the same resolution, the Security Council decided further to dissolve with immediate effect the Committee established by paragraph 14 of resolution 1572 (2004) and the Group of Experts established pursuant to paragraph 7 of resolution 1584 (2005), and subsequently extended, including in paragraph 25 of resolution 2219 (2015).[70]

(v) *Republic of the Sudan*

The Security Council Committee established pursuant to resolution 1591 (2005) of 29 March 2005, to oversee the relevant sanctions measures concerning the Sudan and to undertake the tasks set out by the Security Council in sub-paragraph 3 (*a*) of the same resolution, continued its operations in 2016 and submitted, on 30 December 2016, a report on its work in 2016 to the Security Council.[71]

By resolution 2265 (2016) of 10 February 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of the Panel of Experts, originally appointed pursuant to resolution 1591 (2005), until 12 March 2017, and expressed its intent to review the mandate and take appropriate action regarding further extension no later than 13 February 2017.[72] It also reaffirmed the mandate of the Committee to encourage dialogue with interested Member States, in particular those in the region, and further encouraged the Committee to continue its dialogue with UNAMID.

(vi) *Democratic People's Republic of Korea*

The Security Council Committee established pursuant to resolution 1718 (2006) on 14 October 2006, to oversee the relevant sanctions measures concerning the Democratic People's Republic of Korea (DPRK) and to undertake the tasks set out in paragraph 12 of that same resolution and in resolutions 1874 (2009), 2087 (2013) and 2094 (2013), continued its operations in 2016 and submitted, on 30 December 2016, a report on its work to the Security Council.[73]

By resolution 2270 (2016) of 2 March 2016, 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 on arms and related materiel embargo imposed in paragraph 8 (*a*) of resolution 1718 (2006) should also apply to all arms and related materiel, including small arms and light weapons and their related materiel, as well as to financial transactions, technical training, advice, services or assistance related to the provision,

[70] See the final report of the Group of Experts on Côte d'Ivoire pursuant to paragraph 27 of Security Council resolution 2219 (2015) (S/2016/254).

[71] Report of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan (S/2016/1091).

[72] See the final report of the Panel of Experts on the Sudan established pursuant to resolution 1591 (2005), (S/2016/805).

[73] Report of the Security Council Committee established pursuant to resolution 1718 (2006) (S/2016/1094).

manufacture, maintenance or use of such arms and related materiel, and that the measures imposed in paragraphs 8 (*a*) and 8 (*b*) of resolution 1718 (2006) should also apply to any item that could contribute to the DPRK's nuclear or ballistic missile programs or other weapons of mass destruction programs, activities prohibited by relevant resolutions, and to any item, except food or medicine, that could directly contribute to the development of the DPRK's operational capabilities of its armed forces, or to exports that support or enhance the operational capabilities of armed forces of another Member State outside the DPRK. The Security Council further decided that Member States should expel DPRK diplomats, government representatives, other DPRK nationals acting in a governmental or representative office capacity, and foreign nationals that were working on behalf or at the direction of a designated individual or entity or assisting the evasions of sanctions or violating the resolutions. It also decided that the mandate of the Committee should apply with respect to the measures imposed in the resolution.

By resolution 2276 (2016) of 24 March 2016, the Security Council, acting under Article 41 of Chapter VII of the Charter of the United Nations, decided to extend until 24 April 2017 the mandate of the Panel of Experts, as specified in paragraph 26 of resolution 1874 (2009) and modified in paragraph 29 of resolution 2094 (2013), and further decided that this mandate should apply also with respect to the measures imposed in resolution 2270 (2016), and expressed its intent to review the mandate and take appropriate action regarding further extension no later than 24 March 2017.[74]

By resolution 2321 (2016) of 30 November 2016, 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 in paragraphs 8 (*a*), 8 (*b*), and 8 (*c*) of resolution 1718 (2006) shall also apply to the items listed in a new conventional arms dual-use list to be adopted by the Committee,[75] and that all Member States shall suspend scientific and technical cooperation involving persons or groups officially sponsored by or representing the DPRK except for medical exchanges. It further decided that all Member States should take steps to restrict the entry into or transit through their territory of members of the Government of the DPRK, officials of that Government, and members of the DPRK armed forces associated with the DPRK's nuclear or ballistic missile programmes or other activities prohibited by relevant resolutions and to limit the number of bank accounts to one per DPRK diplomatic mission and consular post, and one per accredited DPRK diplomat and consular officer, at banks in their territory, and that all Member States should prohibit the DPRK from using real property that it owned or leased in their territory for any purpose other than diplomatic or consular activities. It also decided that the mandate of the Committee and of the Panel of Experts should also apply with respect to the measures imposed in the resolution.

(vii) *Islamic Republic of Iran*

The Security Council Committee established pursuant to resolution 1737 (2006) of 23 December 2006, to undertake the tasks set out in paragraph 18 of that same resolution,

[74] For information on the appointment of members to the Group of Experts, see letter dated 8 April 2016 from the Secretary-General addressed to the President of the Security Council (S/2016/333).

[75] S/2016/1069.

as modified by resolutions 1747 (2007), 1803 (2008) and 1929 (2010), concerning the effective implementation of measures relating to, *inter alia*, proliferation-sensitive nuclear and ballistic missile programmes, arms, finance and travel, and the corresponding Panel of Experts, were terminated, in accordance with Security Council resolution 2231 (2015), upon receipt of the report of the Direct General of the International Atomic Energy Agency (IAEA) dated 16 January 2016. The report confirmed that the International Atomic Energy Agency (IAEA) had verified that, as of 16 January 2016, the Islamic Republic of Iran had taken the actions specified in paragraphs 15.1-15.11 of annex V of the Joint Comprehensive Plan of Action (JCPOA).[76]

(viii) *Libya*

The Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya to oversee the relevant sanctions measures continued its operations in 2016 and submitted, on 30 December 2016, a report on its work in 2016 to the Security Council.[77]

In resolution 2278 (2016) of 31 March 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend until 31 July 2017 the authorizations provided by and the measures imposed by resolution 2146 (2014), relating to prevention of illicit oil exports. It also decided to extend until 31 July 2017 the mandate of the Panel of Experts, established by paragraph 24 of resolution 1973 (2011) and modified by resolutions 2040 (2012), 2146 (2014) and 2174 (2014), and decided that the Panel's mandated tasks should remain as defined in resolution 2213 (2015).

By resolution 2292 (2016) of 14 June 2016 and acting under Chapter VII of the Charter of the United Nations, the Security Council decided to authorize all Member States, in these exceptional and specific circumstances for a period of 12 months, to inspect on the high seas off the coast of Libya, of vessels that were believed to be carrying arms or related materiel to or from Libya, in violation of the arms embargo and, upon discovery of prohibited items, to seize and dispose of such items.

(ix) *Afghanistan*

The Security Council Committee established pursuant to resolution 1988 (2011) on 17 June 2011, to oversee the relevant sanctions measures and to undertake the tasks set out by the Security Council in paragraph 30 of the same resolution, continued its operations in 2016 and submitted, on 30 December 2016, a report on its work in 2016 to the Security Council.[78]

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[76] See letter dated 16 January 2016 from the Director General of the International Atomic Energy Agency addressed to the President of the Security Council (S/2016/57).

[77] Report of the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya (S/2016/1078).

[78] Report of the Security Council Committee established pursuant to resolution 1988 (2011) (S/2016/1101). See also Seventh report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2255 (2015) concerning the Taliban and other associated individuals and entities constituting a threat to the peace, stability and security of Afghanistan (S/2016/842).

In resolution 2274 (2016) of 15 March 2016, the Security Council noted the ongoing work of the Committee, its role in supporting the peace and reconciliation process, and welcomed the continuation of the cooperation of the Afghan Government, the High Peace Council and the United Nations Assistance Mission in Afghanistan (UNAMA) with the Committee including its Analytical Support and Sanctions Monitoring Team as per the designation criteria set out in Security Council resolution 2255 (2015).[79]

(x) *Guinea-Bissau*

The Security Council Committee established pursuant to resolution 2048 (2012) on 18 May 2012, to monitor the implementation of the measures imposed by resolution 2048 (2012), designate the individuals subject to the measures and consider requests for exemptions, continued its operations in 2016 and submitted, on 30 December 2016, a report on its work in 2016 to the Security Council.[80]

By resolution 2267 (2016) of 26 February 2016, the Security Council decided to review the sanctions measures established pursuant to resolution 2048 (2012) seven months from the adoption of this resolution.

(xi) *Central African Republic*

The Security Council Committee concerning the Central African Republic (CAR) was established pursuant to resolution 2127 (2013) of 5 December 2013 to oversee the relevant sanctions measure (arms embargo) and to undertake the tasks set out by the Security Council in paragraph 57 of the same resolution. The Committee continued its operations in 2016 and submitted, on 30 December 2016, a report on its work in 2016 to the Security Council.[81]

By resolution 2262 (2016) and acting under Chapter VII of the Charter of the United Nations, the Security Council extended the measures on arms embargo, travel ban and asset freeze imposed in paragraphs 54 and 55 of resolution 2127 (2013) and paragraphs 30 and 32 of resolution 2134 (2014) until 31 January 2017 and decided that the mandate of the Committee should apply with respect to such extended measures. The Security Council also decided to extend the mandate of the Panel of Experts until 28 February 2017 and further specified its tasks.

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[79] See Seventh report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2255 (2015) concerning the Taliban and other associated individuals and entities constituting a threat to the peace, stability and security of Afghanistan (S/2016/842).

[80] Report of the Security Council Committee established pursuant to resolution 2048 (2012) concerning Guinea-Bissau (S/2016/1108). See also the Report of the Secretary-General on the progress made with regard to the stabilization of and restoration of constitutional order in Guinea-Bissau (S/2016/720).

[81] Report of the Security Council Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic (S/2016/1080).

(xii) *Yemen*

The Security Council Committee established pursuant to resolution 2140 (2014) of 26 February 2014, to monitor the implementation of the measures imposed by the resolution, continued its operations in 2016 and submitted, on 30 December 2016, a report on its work in 2016 to the Security Council.[82]

By resolution 2266 (2016) of 24 February 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to renew until 26 February 2017 the measures of assets freeze and travel ban imposed by paragraphs 11 and 15 of resolution 2140 (2014) against individuals or entities designated by the Committee. It also decided to extend until 27 March 2017 the mandate of the Panel of Experts as set out in paragraph 21 of resolution 2140 (2014) and paragraph 21 of resolution 2216 (2015).[83]

(xiii) *South Sudan*

The Security Council Committee established pursuant to resolution 2206 (2015) of 3 March 2015, to monitor the implementation of the measures imposed by the resolution, continued its operations in 2016 and submitted, on 30 December 2016, a report on its work in 2016 to the Security Council.[84]

By resolutions 2271 (2016) of 2 March 2016, 2280 (2016) of 7 April 2016, and 2290 (2016) of 31 May 2016, the Security Council, acting under Article 41 of Chapter VII of the Charter of the United Nations, decided to renew until 15 April 2016, 1 June 2016, and 31 May 2017, respectively, the travel and financial measures imposed by paragraphs 9 and 12 of resolution 2206 (2015).

By the same resolutions, the Security Council extended the mandate of the Panel of Experts until 15 May 2016, 1 July 2016, and 1 July 2017, respectively. In resolution 2290 (2016), the Security council specified the Panel's tasks.

In resolution 2290 (2016), of 31 May, the Security Council, acting under Chapter VII of the Charter of the United Nations, *inter alia*, reaffirmed that the provisions of paragraph 9 of resolution 2206 (2015) apply to individuals, and that the provisions of paragraph 12 of resolution 2206 (2015) apply to individuals and entities, as designated for such measures by the Committee, as responsible for or complicit in, or having engaged in, directly or indirectly, actions or policies that threaten the peace, security or stability of South Sudan, and specified such actions or policies.

In resolution 2304 (2016) of 12 August, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided that if the Secretary-General reported political or operational impediments to operationalizing the Regional Protection Force or obstructions to the United Nations Mission in the Republic of South Sudan (UNMISS) in performance of its mandate, due to the actions of the Transitional Government of National

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[82] Report of the Security Council Committee established pursuant to resolution 2140 (2014) (S/2016/1122).

[83] See Final report of the Panel of Experts in accordance with paragraph 21 (*c*) of resolution 2140 (2014) (S/2016/73).

[84] See Report of the Security Council Committee established pursuant to resolution 2206 (2015) concerning South Sudan (S/2016/1124).

Unity, within five days of receipt of such report it should consider appropriate measures including measures of arms embargo and inspection described in the Annex to the resolution.

(*g*) Terrorism

(i) *General Assembly*

On 1 July 2016, the General Assembly adopted, without a reference to a Main Committee, resolution 70/291 entitled "The United Nations Global Counter-Terrorism Strategy Review" without a vote. In that resolution, the Assembly, *inter alia*, reaffirmed the United Nations Global Counter-Terrorism Strategy[85] and its four pillars, and called upon Member States, the United Nations and other appropriate international, regional and subregional organizations to step up their efforts to implement the Strategy in an integrated and balanced manner and in all its aspects. The Assembly also took note of the report of the Secretary-General on this item[86] as well as of measures that Member States and relevant international, regional and subregional organizations had adopted within the framework of the Strategy, as presented in the report of the Secretary-General and at the fifth biennial review of the Strategy, all of which strengthened cooperation to fight terrorism, including through the exchange of best practices.

On 20 December 2016, the General Assembly, upon the recommendation of the Sixth Committee, adopted resolution 71/151 entitled "Measures to eliminate international terrorism" without a vote.[87]

(ii) *Security Council counter-terrorism and non-proliferation committees*

a. Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities

The 1267 Committee was first established by Security Council resolution 1267 (1999) of 15 October 1999 and sets forth a sanctions regime concerning the Taliban. The regime was modified and strengthened by subsequent resolutions, including resolutions 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009), 1989 (2011) and 2253 (2015) so that the sanctions measures would be applicable to designated individuals and entities associated with Al-Qaida and ISIL (also known as Da'esh), wherever located. The Committee continued its operations in 2016 and submitted, on 30 December 2016, a report on its work in 2016 to the Security Council.[88]

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[85] General Assembly resolution 60/288 of 8 September 2006.

[86] A/70/826.

[87] See A/71/518. See also the Reports from the Secretary-General on Measures to Eliminate International Terrorism (A/71/182, A/71/182/Add.1 and A/71/182/Add.2).

[88] Report of the Security Council Committee established pursuant to resolution 1988 (2011) (S/2016/1101) and Report of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities (S/2016/1115).

By resolution 2331 (2016) of 20 December 2016, the Security Council condemned all acts of trafficking, particularly the sale or trade in persons undertaken by the "Islamic State of Iraq and the Levant" (ISIL, also known as Da'esh) and recognized the importance of collecting and preserving evidence relating to such acts in order to ensure that those responsible could be held accountable. It also expressed its intention to consider targeted sanctions for individuals and entities involved in trafficking in persons in areas affected by armed conflict and in sexual violence in conflict. It further requested the Analytical Support and Sanctions Monitoring Team, when consulting with Member States, to include in their discussions the issue of trafficking in persons in the areas of armed conflict and the use of sexual violence in armed conflict as it relates to ISIL (also known as Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities and to report to the Security Council Committee established pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) on these discussions as appropriate.

b. Counter-Terrorism Committee

The Counter-Terrorism Committee (CTC) was established pursuant to Security Council resolution 1373 (2001) of 28 September 2001, in the wake of the 11 September terrorist attacks in the United States of America, to bolster the ability of United Nations Member States to prevent terrorist acts both within their borders and across regions.[89] By resolution 1535 (2004) of 26 March 2004, the Security Council established the Counter-Terrorism Committee Executive Directorate (CTED) to assist the work of the CTC and coordinate the process of monitoring the implementation of resolution 1373 (2001).

In resolution 2309 (2016) of 22 September 2016, the Security Council requested the CTC to hold a Special Meeting within 12 months, in cooperation with the International Civil Aviation Organization (ICAO), on the issue of terrorist threats to civil aviation, and invites the Secretary-General of ICAO and the Chair of the CTC to brief the Council on the outcomes of this meeting in 12 months' time.

By resolution 2322 (2016) of 12 December 2016, the Security Council directed the CTC, with the support of CTED, to include in its dialogue with international, regional and subregional organizations and Member States their efforts to promote international law enforcement and judicial cooperation in counter-terrorism matters and to work closely with international, regional and subregional organizations and relevant United Nations bodies that have developed relevant networks and cross regional cooperation in order to facilitate international cooperation to counter terrorism and foreign terrorist fighters, including returnees, particularly by providing analysis on capacity gaps and recommendations based on CTED's country assessments.

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

[89] See also Security Council resolution 1624 (2005) of 14 September 2005.

a Committee to report on the implementation of the same resolution. The mandate of the Committee was subsequently extended by resolutions 1673 (2006), 1810 (2008) and 1977 (2011) of 20 April 2011 until 25 April 2021. The Committee continued its operations in 2016 and submitted, on 9 and 29 December 2016, a final document on the 2016 comprehensive review of the status of implementation of resolution 1540 (2004)[90] and a review of the implementation of resolution 1540 (2004) in 2016 to the Security Council,[91] respectively.

In resolution 2325 (2016) of 15 December 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided that the 1540 Committee would continue to submit to the Security Council its Programme of Work, before the end of each January, and would brief the Security Council in the first quarter of each year. It also decided that the 1540 Committee should continue to intensify its efforts to promote the full implementation by all States of resolution 1540 (2004).

(*h*) Humanitarian law and human rights in the context of peace and security

(i) *Children and armed conflict*

The Security Council Working Group on Children and Armed Conflict was established by Security Council resolution 1612 (2005) to review reports of the monitoring and reporting mechanism concerning on children armed conflict listed in the annexes to the Secretary-General's report on children and armed conflict.[92] The Working Group continued its operations in 2016 and submitted, on 23 December 2016, a report of its activities in 2016 to the Security Council.[93]

By resolution 2313 (2016) of 13 October 2016, the Security Council strongly condemned the grave violations and abuses against children affected particularly by criminal gang violence, as well as wide spread rape and other sexual abuse of women and girls in Haiti, calling upon the Government of Haiti, with the support of MINUSTAH and the United Nations country team, to continue to promote and protect the rights of women and children.

By resolution 2331 (2016) of 20 December 2016, the Security Council expressed its intention to consider targeted sanctions for individuals and entities involved in trafficking in persons in areas affected by armed conflict and in sexual violence in conflict, and encouraged information exchange and other appropriate forms of cooperation between relevant United Nations entities, including the Special Representative on Sexual Violence in Conflict and the Special Representative on Children in Armed Conflict, within their respective mandates, regarding initiatives and strategies to curb trafficking in persons in the context of armed conflict.

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[90] Report of the Security Council Committee established pursuant to resolution 1540 (2004) (S/2016/1038).

[91] Review of the implementation of resolution 1540 (2004) for 2016 (S/2016/1127).

[92] A/59/659–S/2005/72.

[93] Annual report on the activities of the Security Council Working Group on Children and Armed Conflict established pursuant to resolution 1612 (2005) (S/2016/1116).

(ii) *Women and peace and security*[94]

In a statement on 15 June 2016 made by its President,[95] the Security Council welcomed the adoption of regional frameworks to implement resolution 1325 (2000), including the African Union's Gender, Peace and Security Programme 2015–2020, and expressed its support for the AU Special Envoy on Women, Peace and Security, Bineta Diop. The Security Council further welcomed the efforts of Member States in this regard, including the development of national action plans on women, peace and security, but noted that despite these commitments, inconsistent levels of political will, resourcing, accountability, dedicated gender expertise and attitudinal change have often prevented the full and meaningful inclusion of women in regional and international efforts to prevent and resolve conflict, and to build and sustain peace.

The Security Council further emphasized the importance of a comprehensive approach to sustaining peace, particularly through the prevention of conflict and addressing its root causes, and in this regard, reaffirmed the substantial link between women's meaningful involvement in efforts to prevent, resolve and rebuild from conflict and those efforts' effectiveness and long-term sustainability.[96]

(iii) *Protection of civilians in armed conflict*

In resolution 2286 (2016) of 3 May 2016, the Security Council, *inter alia*, strongly condemned acts of violence, attacks and threats against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, and deplored the long-term consequences of such attacks for the civilian population and the health-care systems of the countries concerned. It further strongly urged the States and all parties to armed conflict to develop effective measures to prevent and address acts of violence, attacks and threats against medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities in armed conflict.

(iv) *Youth*

In resolution 2282 (2016) of 27 April 2016, the Security Council called upon States and relevant United Nations organs and entities to consider ways to increase meaningful and inclusive participation of youth in peacebuilding efforts through creating policies, including in partnership with private sector where relevant, that would enhance youth capacities and skills, and create youth employment to actively contribute to sustaining peace.[97]

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[94] For more information on the legal activities of the United Nations as it relates to women, see section 6 sub-section (*e*) of the present chapter.

[95] Statement by the President of the Security Council of 15 June 2016 (S/PRST/2016/9).

[96] See also the Report of the Secretary-General on Women and Peace and Security (S/2016/822).

[97] See also Human Rights Council resolution 32/1, entitled "Youth and human rights" (A/HRC/RES/32/1).

(*i*) Comprehensive assessment of United Nations peace operations

In a statement by the President of the Security Council of 25 November 2015,[98] the Security Council took note of the recommendations in the report of the High-level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people of 17 June 2015[99] and the report of the Secretary-General entitled "The Future of United Nations Peace Operations: Implementation of the Recommendations of the High-Level Independent Panel on Peace Operations" of 2 September 2015.[100] In 2016, the Secretary-General provided a follow-up to the latter report entitled "Revised estimates relating to the report of the Secretary-General on the future of United Nations peace operations: implementation of the recommendations of the High-level Independent Panel on Peace Operations".[101]

(*j*) Piracy

On 9 November 2016, the Security Council adopted resolution 2316 (2016), whereby it welcomed the report of the Secretary-General[102] pursuant to resolution 2246 (2015), on the implementation of that resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia.

Acting under Chapter VII of the Charter of the United Nations, the Security Council, *inter alia*, welcomed the new draft coast guard law which the Somali authorities, with the support of the European Union Naval Force (EUNAVFOR) Operation Atalanta and the EU Mission on Regional Maritime Capacity in the Horn of Africa (EUCAP Nestor), had submitted to the Council of Ministers for approval by Parliament.

Furthermore, the Security Council decided to renew the authorizations as set out in paragraph 14 of resolution 2246 (2015) granted to States and regional organizations cooperating with Somali authorities in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by Somali authorities to the Secretary-General for a further period of twelve months. It noted, however, that the arms embargo on Somalia imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) and modified by paragraphs 33 to 38 of resolution 2093 (2013) did not apply to supplies of weapons and military equipment or the provision of assistance destined for the sole use of Member States, international, regional, and subregional organizations.

(*k*) Migrant smuggling and human trafficking

By resolution 2312 (2016) of 6 October 2016, the Security Council, acting under Chapter VII of the Charter of the United Nations, condemned all acts of migrant smuggling and human trafficking into, through and from the Libyan territory and off the coast of Libya. It decided, *inter alia,* to renew the authorizations as set out in paragraphs 7, 8,

[98] S/PRST/2015/22.

[99] A/70/95–S/2015/446.

[100] A/70/357–S/2015/682.

[101] A/70/745.

[102] S/2016/843.

9 and 10 of resolution 2240 (2015) for a period of twelve months. The Security Council further emphasized that all migrants, including asylum seekers, should be treated with humanity and dignity and that their rights should be fully respected, urging all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law.

By resolution 2331 (2016) of 20 December 2016, the Security Council condemned in the strongest terms all instances of trafficking in persons in areas affected by armed conflicts and stressed that trafficking in persons undermines the rule of law and contributes to other forms of transnational organized crime, which can exacerbate conflict and foster insecurity and instability and undermine development. It further called upon States to, *inter alia*, take decisive and immediate action to prevent, criminalize, investigate, prosecute and ensure accountability of those who engage in trafficking in persons, namely by investigating, disrupting and dismantling networks involved in trafficking in persons in the context of armed conflict, in accordance with national legislation, including anti-money-laundering, anti-corruption and anti-bribery laws and, where appropriate, counter-terrorism laws.

In the same resolution, the Security Council further affirmed that victims of trafficking in persons in all its forms, and of sexual violence, committed by terrorist groups should be classified as victims of terrorism with the purpose of rendering them eligible for official support, recognition and redress available to victims of terrorism, have access to national relief and reparations programmes, contribute to lifting the sociocultural stigma attached to this category of crime and facilitate rehabilitation and reintegration efforts.

3. Disarmament and related matters[103]

(*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, comprises all Member States of the United Nations.

The Commission held its organizational session for 2016 in New York on 19 January 2016.[104] The Commission then held six plenary meetings at United Nations Headquarters from 4 to 22 April 2016.[105] The Commission had before it the report of the Conference on Disarmament on its 2015 session[106] and other documentation submitted by the

[103] For more information about disarmament and related matters, see *The United Nations Disarmament Yearbook,* vol. 41, 2016 (United Nations publication, Sales No. E.17.IX.3), which is also available at https://www.un.org/disarmament/.

[104] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 42* (A/71/42), para. 2.

[105] *Ibid.,* para. 5.

[106] *Official Records of the General Assembly, Seventieth Session, Supplement No. 27* (A/70/27).

Secretary-General,[107] as well as other documents submitted by Member States dealing with substantive questions.[108]

At its 360th meeting on 22 April 2016, the Commission adopted, by consensus, the reports of the Commission and its subsidiary bodies to be submitted to the General Assembly.[109]

(ii) *Conference on Disarmament*

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.

The Conference was in session from 25 January to 1 April, 16 May to 1 July and 1 August to 16 September 2016, during which it held 30 formal plenary meetings and six informal plenary meetings.[110] At its 1371st plenary meeting on 26 January 2016, the Conference adopted its agenda for the 2016 session,[111] 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", "Comprehensive programme of disarmament" and "Transparency in armaments".

Throughout the 2016 session, successive presidents of the Conference conducted intensive consultations with a view to reaching consensus on a programme of work on the basis of relevant proposals, but no consensus was reached on a programme of work for the 2016 session.[112] On 6 September 2016, the Conference adopted its annual report and transmitted it to the General Assembly for its consideration.[113]

(iii) *General Assembly*

In 2016, the General Assembly adopted, on the recommendation of the First Committee, 10 resolutions and one decision concerning institutional activities relating to disarmament machinery.

On 5 December 2016, the General Assembly adopted resolution 71/57 entitled "United Nations study on disarmament and non-proliferation education", without a vote; resolution 71/73 entitled "United Nations disarmament fellowship, training and advisory services", without a vote; resolution 71/74 entitled "United Nations Disarmament Information Programme", without a vote; resolution 71/76 entitled "United Nations

[107] See A/CN.10/210.

[108] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 42* (A/71/42), para. 15.

[109] *Ibid.*, para. 17.

[110] *Official Records of the General Assembly, Seventieth Session, Supplement No. 27* (A/70/27), paras. 2–3.

[111] *Ibid.*, para. 12.

[112] *Ibid.*, para. 21.

[113] *Ibid.*, para. 56.

Regional Centre for Peace and Disarmament in Africa", without a vote; resolution 71/77 entitled "United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean", without a vote; resolution 71/78 entitled "United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific", without a vote; resolution 71/79 entitled "Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa" without a vote; resolution 71/80 entitled "United Nations regional centres for peace and disarmament", without a vote; resolution 71/81 entitled "Report of the Conference on Disarmament", without a vote; and resolution 71/82 entitled "Report of the Disarmament Commission", without a vote.

On the same day, the Assembly also adopted, by a recorded vote of 179 in favour to none against, with 5 abstentions, decision 71/517 entitled "Open-ended Working Group on the fourth special session of the General Assembly devoted to disarmament".

(*b*) Nuclear disarmament and non-proliferation issues

On 21 September 2016, the eighth Ministerial Meeting of the Member States of the Comprehensive Nuclear Test-Ban Treaty, 1996 (CTBT),[114] took place at the United Nations Headquarters in New York.[115] Foreign ministers and other high-level representatives of the Member States issued a joint ministerial statement calling for the prompt entry into force of the CTBT.[116]

The International Atomic Energy Agency (IAEA) held its sixtieth General Conference of Member States from 26 to 30 September 2016 in Vienna.[117] The Conference adopted 16 resolutions and 3 decisions [118] relating to the work of IAEA in key areas, including on measures to strengthen international cooperation in nuclear, radiation, transport and waste safety, nuclear security; strengthening the Agency's activities related to nuclear science, technology and applications; implementation of the Agreement between the Agency and the Democratic People's Republic of Korea; and application of IAEA safeguards in the Middle East.

(i) *General Assembly*

On 5 December 2016, the General Assembly adopted, upon the recommendation of the First Committee, several resolutions concerning nuclear weapons and non-proliferation issues: resolution 71/26 entitled "African Nuclear-Weapon-Free Zone Treaty", without a vote; resolution 71/27 entitled "Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)", without a vote; resolution 71/29 entitled "Establishment of a nuclear-weapon-free zone in the region of the Middle East", without a vote; resolution 71/30 entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons",

[114] General Assembly resolution A/50/245 of 17 September 1996. For the text of the treaty, see A/50/1027.

[115] For more information see https://www.ctbto.org/the-treaty/ctbt-ministerial-meetings/2016/.

[116] See A/71/736.

[117] For more information see https://www.iaea.org/about/policy/gc/gc60.

[118] GC(60)/RES/DEC(2016).

by a recorded vote of 128 in favour to none against, with 57 abstentions; resolution 71/33 entitled "The Hague Code of Conduct against Ballistic Missile Proliferation", by a recorded vote of 166 in favour to 1 against, with 16 abstentions; resolution 71/37 entitled "Reducing nuclear danger", by a recorded vote of 126 in favour to 49 against, with 10 abstentions; resolution 71/43 entitled "Mongolia's international security and nuclear-weapon-free status", without a vote; resolution 71/46 entitled "Humanitarian consequences of nuclear weapons", by a recorded vote of 144 in favour to 16 against, with 24 abstentions; resolution 71/47 entitled "Humanitarian pledge for the prohibition and elimination of nuclear weapons", by a recorded vote of 137 in favour to 34 against, with 12 abstentions; resolution 71/49 entitled "United action with renewed determination towards the total elimination of nuclear weapons", by a recorded vote of 167 in favour to 4 against, with 16 abstentions; resolution 71/51 entitled "Nuclear-weapon-free southern hemisphere and adjacent areas", by a recorded vote of 179 in favour to 4 against, with 1 abstention; resolution 71/53 entitled "Decreasing the operational readiness of nuclear weapons systems", by a recorded vote of 175 in favour to 4 against, with 5 abstentions; resolution 71/54 entitled "Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments", by a recorded vote of 137 in favour to 25 against, with 19 abstentions; resolution 71/55 entitled "Ethical imperatives for a nuclear-weapon-free world", by a recorded vote of 130 in favour to 37 against, with 15 abstentions; resolution 71/58 entitled "Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons", by a recorded vote of 136 in favour to 25 against, with 22 abstentions; resolution 71/63 entitled "Nuclear disarmament", by a recorded vote of 122 in favour to 44 against, with 17 abstentions; resolution 71/65 entitled "Treaty on a Nuclear-Weapon-Free Zone in Central Asia", without a vote; resolution 71/67 entitled "Nuclear disarmament verification", by a recorded vote of 175 in favour to none against, with 6 abstentions; resolution 71/71 entitled "Follow-up to the 2013 high-level meeting of the General Assembly on nuclear disarmament", by a recorded vote of 140 in favour to 30 against, with 15 abstentions; resolution 71/75 entitled "Convention on the Prohibition of the Use of Nuclear Weapons", by a recorded vote of 128 in favour to 50 against, with 9 abstentions; resolution 71/83 entitled "The risk of nuclear proliferation in the Middle East", by a recorded vote of 157 in favour to 5 against, with 22 abstentions; and resolution 71/86 entitled "Comprehensive Nuclear-Test-Ban Treaty", by a recorded vote of 181 in favour to 1 against, with 3 abstentions.

On 13 December 2016, the General Assembly adopted, without reference to a Main Committee, resolution 71/158 entitled "Report of the International Atomic Energy Agency", without a vote.

On 23 December 2016, the General Assembly adopted, upon the recommendation of the First Committee, resolution 71/258 entitled "Taking forward multilateral nuclear disarmament negotiations", by a recorded vote of 113 in favour to 35 against, with 13 abstentions, and resolution 71/259 entitled "Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices", by a recorded vote of 158 in favour to 2 against, with 9 abstentions.

On 5 December 2016, the General Assembly also adopted, on the recommendation of the First Committee, decision 71/515 entitled "Further measures in the field of disarmament for the prevention of an arms race on the seabed and the ocean floor and in the subsoil thereof" and decision 71/516 entitled "Missiles", without a vote, respectively.

(ii) *Security Council*

In 2016, the Security Council adopted five resolutions relating to nuclear disarmament and non-proliferation issues. Resolutions 2270 (2016) of 2 March 2016 and 2321 (2016) of 30 November 2016 related to nuclear tests conducted by the Democratic People's Republic of Korea in violation of several Security Council resolutions. Resolutions 2276 (2016) of 24 March 2016 and 2325 (2016) of 15 December 2016 related to the mandates of the Panels of Experts established to monitor sanctions measures imposed on the Democratic People's Republic of Korea and the mandate of the 1540 Committee in respect of general obligations of non-proliferation, respectively. Finally, in resolution 2310 (2016) of 23 September 2016, the Security council reaffirmed its firm commitment to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and urged all States that had either not signed or ratified the Comprehensive Nuclear-Test-Ban Treaty, particularly the eight remaining Annex 2 States, to do so without further delay.

(*c*) Biological and chemical weapons issues

(i) *Biological Weapons Convention*

The Eighth 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 (Biological Weapons Convention), [119] was held in Geneva from 7 to 25 November 2016. In addition to its comprehensive review of the Convention's provisions, the Conference, *inter alia*, decided that States Parties would hold annual meetings during the period from 2017 to 2021 to seek to make progress on issues of substance and process for the period before the next Review Conference, and to renew, *mutatis mutandis*, the mandate of the Implementation Support Unit agreed to at the Seventh Review Conference, for the same period.[120]

(ii) *Chemical Weapons Convention*

The twenty-first 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, 1992 (Chemical Weapons Convention)[121] was held in the Hague, from 28 November to 2 December 2016. The Conference considered, *inter alia*, the status of implementation of the Chemical Weapons Convention, fostering of international cooperation for peaceful purposes in the field of chemical activities, the OPCW Programme for Africa and the engagement with chemical industry and the scientific community. On 2 December 2016, the Conference considered and adopted the report of its twentieth-first session.[122]

The membership of the Organization for the Prohibition of Chemical Weapons (OPCW) remained as 192 States parties in 2016.

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[119] United Nations, Treaty Series, vol. 1015, p. 164.

[120] See the Final Document of the Eighth Review Conference (BWC/CONF.VIII/4).

[121] United Nations, *Treaty Series*, vol. 1974, p. 45.

[122] C-21/5.

(iii) *General Assembly*

On 5 December 2016, the General Assembly adopted three resolutions relating to biological and chemical weapons in 2016, on the recommendation of the First Committee, namely resolution 71/59, entitled "Measures to uphold the authority of the 1925 Geneva Protocol", by a recorded vote of 181 in favour to none against, with 2 abstentions; resolution 71/69, entitled "Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction", by a recorded vote of 160 in favour to 6 against, with 15 abstentions; and resolution 71/87 entitled "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction", without a vote.

(iv) *Security Council*

On 22 July 2016, the Security Council adopted resolution 2298 (2016) concerning the destruction of Libya's chemical weapons. The Council, acting under Chapter VII of the Charter of the United Nations, *inter alia*, encouraged Member States to assist the Government of National Accord to enable the OPCW to implement the elimination of Libya's category 2 chemical weapons, and authorized Member States to acquire, control, transport, transfer and destroy chemical weapons identified by the Director-General of the OPCW, consistent with the objective of the Chemical Weapons Convention, to ensure the elimination of Libya's chemical weapons stockpile in the soonest and safest manner, with appropriate consultations with the Government of National Accord.

By resolutions 2314 (2016) of 31 October 2016 and resolution 2319 (2016) of 17 November 2016, the Security Council decided to renew the mandate of the of the Organisation for the Prohibition of Chemical Weapons—United Nations Joint Investigative Mechanism (OPCW-JIM), as set out in resolution 2235, until 18 November 2016 and for a further period of one year from the adoption of the second resolution, respectively, with a possibility of further extension and update by the Security Council if it deemed necessary. In both resolutions, the Security Council, *inter alia*, condemned again in the strongest terms any use of any toxic chemical as a weapon in the Syrian Arab Republic.

Finally, the Security Council, acting under Chapter VII of the Charter of the United Nations, adopted resolution 2325 (2016) of 15 December 2016, reiterating resolution 1540 and the mandate of the 1540 Committee.

(*d*) Conventional weapons issues

(i) *International Trade in Conventional Arms*

Pursuant to a decision of the First Conference of States Parties to the Arms Trade Treaty, 2013 (ATT),[123] an Extraordinary Meeting of States Parties was held in Geneva on 29 February 2016. The meeting adopted, *inter alia*, draft proposals concerning administrative arrangements and structure of the ATT Secretariat.

[123] United Nations, *Treaty Series*, registration No. 52373. See also A/69/173 and Add.1.

The Second Conference of States Parties to the ATT was held in Geneva from 22 to 26 August 2016. A number of decisions were adopted by the Conference, concerning, *inter alia*, the Voluntary Trust Fund and the establishment of working groups for the effective implementation of the ATT and its universalization, respectively. On 26 August 2016, the Conference adopted its final report.[124]

On 5 December 2016, the General Assembly, on the recommendation of the First Committee, adopted resolution 71/48 entitled "The illicit trade in small arms and light weapons in all its aspects", without a vote; resolution 71/50 entitled "The Arms Trade Treaty", by a recorded vote of 157 in favour to none against, with 28 abstentions; and resolution 71/52 entitled "Assistance to States for curbing the illicit traffic in small arms and light weapons and collecting them", without a vote.

(ii) *Other conventional weapons issues*

On 5 December 2016, the General Assembly, on the recommendation of the First Committee, adopted eight other resolutions dealing with conventional arms issues: resolution 71/34 entitled "Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction", by a recorded vote of 160 in favour to none against, with 20 abstentions; resolution 71/35 entitled "Information on confidence-building measures in the field of conventional arms", without a vote; resolution 71/36 entitled "Preventing and combating illicit brokering activities", by a recorded vote of 184 in favour to 1 against, with 1 abstention; resolution 71/44 entitled "Transparency in armaments", by a recorded vote of 156 in favour to none against, with 29 abstentions; resolution 71/45 entitled "Implementation of the Convention on Cluster Munitions", by a recorded vote of 141 in favour to 2 against, with 39 abstentions; resolution 71/68 entitled "National legislation on transfer of arms, military equipment and dual-use goods and technology", by a recorded vote of 180 in favour to none against, with 3 abstentions; resolution 71/72 entitled "Countering the threat posed by improvised explosive devices", without a vote; and resolution 71/84 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", without a vote.

The Security Council did not adopt a specific resolution on the conventional weapons, but it addressed the topic in different resolutions.[125]

(iii) *Other international conferences and meetings*

The Sixth Meeting of States Parties to the Convention on Cluster Munitions, 2008,[126] was held from 5 to 7 September 2016 in Geneva.[127] Actions taken by the Meeting

[124] ATT/CSP2/2016/5.

[125] See for example resolution 2262 (2016) of 27 January 2016, paras. 1–4, and resolution 2321(2016) of 30 November, paragraph 7.

[126] United Nations, *Treaty Series*, vol. 2688, p. 39.

[127] CCM/MSP/2016/9.

included the adoption of a political declaration on, *inter alia*, the universalization of the Convention and assistance for victims and survivors of cluster munitions.[128]

The Fifth Review Conference of 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 (Convention on Conventional Weapons)[129] was held from 12 to 16 December 2016 in Geneva.[130] The Meeting decided, *inter alia*, to establish an Open-ended Group of Governmental Experts related to emerging technologies in the area of lethal autonomous weapons systems in the context of the objectives and purposes of the Convention.[131]

With regard to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996 (Amended Protocol II)[132] annexed to the Convention on Conventional Weapons, the Eighteenth Annual Conference of the High Contracting Parties to Amended Protocol II was held on 30 August 2016 in Geneva. The Conference, *inter alia*, reviewed the operation and status of the Protocol and adopted a declaration on improvised explosive devices for submission to the Fifth Review Conference of the Convention on Conventional Weapons.[133]

The 2016 Meeting of Experts relating to the Protocol on Explosive Remnants of War (Protocol V)[134] was held on 29 August 2016 in Geneva. The main focus of the Meeting of Experts was on the following issues: Universalization; clearance, removal or destruction of explosive remnants of war; cooperation and assistance and requests for assistance; generic preventive measures; national reporting and victim assistance.[135] The Meeting, *inter alia*, decided that the 2017 Meeting of Experts would include a workshop on article 4 of the Protocol, entitled "Recording, retaining and transmission of information". It further agreed on a text to be submitted to the Fifth Review Conference of the Convention on Conventional Weapons.

The Fifteenth 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 (Mine-Ban Convention)[136] was held in Geneva from 28 November to 1 December 2016. The Meeting considered reports on the work of the Convention's four committees, established by the Third Review Conference.[137] A panel on Gender and Mine Action was held during the seventh plenary session with the participation of several authorities including Ministers, Directors and representatives of Member States. The Meeting further welcomed the commitment by Ukraine to continue to engage with the Committee on article 5 Implementation and welcomed the report of the Committee on the Enhancement

[128] CCM/MSP/2016/9, annex I.

[129] United Nations, *Treaty Series,* vol. 1342, p. 137.

[130] CCW/CONF.V/10.

[131] CCW/CONF.V/2.

[132] United Nations, *Treaty Series*, vol. 2048, p. 93.

[133] CCW/AP.II/CONF.18/6.

[134] United Nations, *Treaty Series*, vol. 2399, p. 100.

[135] CCW/P.V/CONF/2016/8.

[136] United Nations, *Treaty Series*, vol. 2056, p. 211.

[137] APLC/CONF/2014/4, para. 25 and annex III.

of Cooperation and Assistance, taking note of the conclusions contained therein. At its final plenary session, on 1 December 2016, the Meeting adopted its final report.[138]

(*e*) Regional disarmament activities of the United Nations

(i) *Africa*

In 2016, the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) continued to assist, upon request, Member States and intergovernmental and civil society organizations in Africa to promote disarmament, peace and security.[139]

The Centre focused its work on providing assistance to Member States, at their request, to combat the illicit trafficking in and prevent the diversion of illicit small arms and light weapons in the region through capacity-building for civilian authorities, defence and security forces and United Nations peacekeeping mission personnel. It also provided assistance in the implementation of the Arms Trade Treaty and of instruments relating to weapons of mass destruction, including Security Council resolution 1540 (2004). In doing so, the Centre partnered with the African Union, subregional organizations, civil society organizations and other United Nations entities.

On 25 January 2016, UNREC, the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), and the African Union convened a High-Level Panel on the "Silencing the Guns in 2020", a side event on the margins of the Summit of Heads of State of the African Union in Addis Ababa, Ethiopia. The initiative aimed at examining disarmament limitations and the humanitarian impacts of not silencing guns in Africa. It further fostered discussion around the topic promoting exchange of views and partnerships in order to evaluate innovative measures and policies for enhancing disarmament efforts towards gun control in Africa.

Moreover, the United Nations Regional Office for Central Africa, in its role as the secretariat of the United Nations Standing Advisory Committee for Security Questions in Central Africa (UNSAC) organized the forty-third ministerial meeting of UNSAC, held in Sao Tome, from 28 November to 1 December 2016. During the two ministerial meetings, the Committee reviewed the political and security situation in Central Africa and made specific recommendations on the actions needed to address the prevailing security challenges.

The Peace and Security Council of the African Union (AU), at its 584th meeting held on 29 March 2016 in Addis Ababa, Ethiopia, adopted a decision on arms control, disarmament and non-proliferation.[140]

On 6 and 7 April 2016, the African Union hosted the Review and Assistance Conference on the Implementation of Security Council Resolution 1540 (2004) in Africa,

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[138] APLC/MSP.15/2016/10.

[139] For more information, see the reports of the Secretary-General on the United Nations Regional Centre for Peace and Disarmament (A/71/128 (for the period from July 2015 to June 2016) and A/72/97 (for the period from July 2016 to June 2017)).

[140] *The United Nations Disarmament Yearbook*, vol. 41 (Part II), 2016 (United Nations publication, Sales No.: E.17.IX.4), pp. 123–124. See also the African Union Communiqué available at http://www.peaceau.org/en/article/the-584th-meeting-of-the-au-peace-and-security-council-on-arms-controldisarmament-and-non-proliferation.

offering a platform for member States to discuss domestic implementation, increase regional cooperation and promote the ratification of the African Nuclear Weapon-Free-Zone Treaty (Pelindaba Treaty). Particularly through UNREC, the work was continued for the support for disarmament, arms control and non-proliferation efforts throughout the region, with a particular focus on combating the illicit trafficking and on preventing the diversion of small arms and light weapons (SALW) and supporting activities to address weapons of mass destruction, including the implementation of Security Council resolution 1540 (2004). UNREC has been working across the region, namely in the Sahel region, in Mali and in 2016 started an initiative to support the Lake Chad Basin countries through the United Nations Counter-Terrorism Implementation Task Force, which is intended to implement Security Council resolution 2178 (2014) and national capacity-building programmes to assist countries affected by the group Boko Haram in preventing the diversion of SALW to non-State armed groups, particularly foreign terrorist fighters. [141]

(ii) *Asia and the Pacific*

The United Nations Regional Centre for Peace, Disarmament and Development in Asia and the Pacific (UNRCPD) continued its promotion of disarmament, non-proliferation and arms control programmes in the region throughout 2016. [142] The Regional Centre organized the Fifteenth United Nations–Republic of Korea Joint Conference on Disarmament and Non-Proliferation Issues in Jeju, Republic of Korea, and the twenty-sixth United Nations Conference on Disarmament Issues, in Nagasaki, Japan. It organized national workshops in Cambodia, Myanmar and Thailand to strengthen national capacities to implement the United Nations Programme of Action on Small Arms and Light Weapons, and two capacity-building workshops on the Arms Trade Treaty. The Regional Centre further undertook projects relating to the implementation of Security Council resolution 1540 (2004).

In 2016, the United Nations and the Association of Southeast Asian Nations (ASEAN) agreed to take various measures with respect to peace and security. The Plan of Action to Implement the Joint Declaration on the Comprehensive Partnership between ASEAN and the United Nations for the period from 2016 to 2020, adopted on 7 September 2016 at the eighth ASEAN–United Nations Summit in Vientiane, called, in part, for the following: (*a*) enhancing cooperation in matters related to arms control, disarmament and non-proliferation, including through regional consultations and symposiums, as well as other activities to promote the effective implementation of global and regional treaties and other instruments; and (*b*) enhancing dialogue to support global efforts at promoting nuclear disarmament and non-proliferation and peaceful use of nuclear energy. The Plan of Action also contained two items concerning the Treaty on the Southeast Asia Nuclear Weapon-Free Zone (Bangkok Treaty).[143]

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[141] For more information, see Report of the Secretary-General on the United Nations Regional Centre for Peace, Disarmament and Development in Africa (A/71/128).

[142] For more information, see the reports of the Secretary-General on the United Nations Regional Centre for Peace, Disarmament and Development in Asia and the Pacific (A/71/125 (for the period from 1 July 2015 to 30 June 2016) and A/72/98 (for the period from 1 July 2016 to 30 June 2017)).

[143] *The United Nations Disarmament Yearbook*, vol. 41 (Part II), 2016 (United Nations publication, Sales No.: E.17.IX.4), pp. 148–149.

The eighth Inter-Sessional Meeting on Non-Proliferation and Disarmament of the ASEAN Regional Forum, held in Putrajaya in April 2016, discussed the nuclear test and the missile launch by the Democratic People's Republic of Korea, as well as the expansion of the sanctions regime against the country by Security Council resolution 2270 (2016).

(iii) *Latin America and the Caribbean*

The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) continued its technical, legal and training activities to support the efforts by States in the region in their implementation of disarmament, arms control and non-proliferation instruments and adherence to international standards and norms in those fields.[144] The Regional Centre also assisted States in the region in their implementation of Security Council resolution 1540 (2004), in particular with regard to issues relating to national legislation, maritime border security, combating proliferation financing and national action plans. With the adoption of the 2030 Agenda for Sustainable Development, the Regional Centre aligned its activities to support the realization of the Sustainable Development Goals, in particular Goal 16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels"). Furthermore, the Regional Centre also continued its efforts to promote the participation of women in disarmament, arms control and non-proliferation initiatives, in line with General Assembly resolution 65/69 on women, disarmament, non-proliferation and arms control.

(iv) *General Assembly*

On 5 December 2016, upon the recommendation of the First Committee, the General Assembly adopted without a vote the following resolutions dealing with regional disarmament: resolution 71/39 entitled "Confidence-building measures in the regional and subregional context"; resolution 71/40 entitled "Regional disarmament"; resolution 71/76 entitled "United Nations Regional Centre for Peace and Disarmament in Africa"; resolution 71/77 entitled "United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean"; resolution 71/78 entitled "United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific"; resolution 71/79 entitled "Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa"; resolution 71/80 entitled "United Nations regional centres for peace and disarmament"; and resolution 71/85 entitled "Strengthening of security and cooperation in the Mediterranean region". On the same day, upon the recommendation of the First Committee, the Assembly also adopted resolution 71/41 entitled "Conventional arms control at the regional and subregional levels", by a recorded vote of 183 to 1, with 3 abstentions.

[144] For more information, see reports of the Secretary-General on the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (A/71/127 (for the period from July 2015 to June 2016) and A/72/99 (for the period from July 2016 to June 2017)).

(*f*) Outer space (disarmament aspects)

The thirty-sixth session of the Inter-Agency Meeting on Outer Space Activities (UN-Space) was held on 3 March 2016 at United Nations Headquarters in New York. The session, organized by the Office for Outer Space Affairs and hosted in coordination with the Office for Disarmament Affairs, focused, foremost, on the topic of transparency and confidence-building in relation to outer space activities. The agenda of the thirty-sixth session of UN-Space, as adopted, and the list of participants are contained in annexes IV and V.[145]

In 2016, entities within the United Nations system, especially UNODA and the United Nations Office for Outer Space Affairs (UNOOSA), deepened their cooperation in facilitating efforts by Member States to implement the conclusions and recommendations in the 2013 report of the Group of Governmental Experts on Transparency and Confidence-Building Measures in Outer Space Activities.[146] As of particular note, UNODA became a full member of UN-Space.

Following the mandate in General Assembly resolution 70/82 of 9 December 2015, UNOOSA submitted the special report to the fifty-ninth session of the Committee on the Peaceful Uses of Outer Space, held from 8 to 17 June 2016.[147]

General Assembly

On 5 December 2016, the General Assembly, upon the recommendation of the First Committee, adopted the following resolutions with regard to disarmament activities in outer space: resolution 71/31 entitled "Prevention of an arms race in outer space", by a recorded vote of 182 to 0, with 4 abstentions; resolution 71/32 entitled "No first placement of weapons in outer space", by a recorded vote of 130 to 4, with 48 abstentions.

On 6 December 2016, the Assembly adopted, upon the recommendation of the Fourth Committee, resolution 71/90 entitled "International cooperation in the peaceful uses of outer space", without a vote.

(*g*) Other disarmament measures and international security

General Assembly

On 5 December 2016, the General Assembly, upon the recommendation of the First Committee, adopted resolution 71/28, entitled "Developments in the field of information and telecommunications in the context of international security", by a recorded vote of 181 to 0, with 1 abstention; resolution 71/36, entitled "Preventing and combating illicit brokering activities", by a recorded vote of 181 to 1, with 1 abstention; resolution 71/56 entitled "Women, disarmament, non-proliferation and arms control", without a vote; resolution 71/57, entitled "United Nations study on disarmament and non-proliferation

[145] See Report of the Inter-Agency Meeting on Outer Space Activities (UN-Space) on its thirty-fifth and thirty-sixth sessions, A/AC.105/1114.

[146] A/68/189.

[147] *The United Nations Disarmament Yearbook*, vol. 41 (Part II), 2016 (United Nations publication, Sales No.: E.17.IX.4), pp. 173–174. See also the Final Document of the fifty-ninth session of the Committee on the Peaceful Uses of Outer Space A/AC.105/1116.

education" without a vote; resolution 71/59, entitled "Measures to uphold the authority of the 1925 Geneva Protocol", by a recorded vote of 181 to 0, with 2 abstentions; resolution 71/60, entitled "Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control" without a vote; resolution 71/61, entitled "Promotion of multilateralism in the area of disarmament and non-proliferation" by a recorded vote of 132 to 4, with 50 abstentions; resolution 71/70, entitled "Effects of the use of armaments and ammunitions containing depleted uranium", by a recorded vote of 151 to 4, with 28 abstentions.

4. Legal aspects of peaceful uses of outer space

(*a*) Legal Subcommittee on the Peaceful Uses of Outer Space

The Legal Subcommittee on the Peaceful Uses of Outer Space held its fifty-fifth session at the United Nations Office in Vienna from 4 to 15 April 2016.[148]

Under the agenda item "Information on the activities of international intergovernmental and non-governmental organizations relating to space law", the Subcommittee, *inter alia*, agreed that it was important to continue the exchange of information on recent developments in the area of space law between the Subcommittee and international intergovernmental and non-governmental organizations and that such organizations should once again be invited to report to the Subcommittee, at its fifty-sixth session, on their activities relating to space law.

With regard to 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 and endorsed the report of the Chair of the Working Group on 14 April 2016.[149] The Subcommittee was informed that the Democratic People's Republic of Korea had acceded to the Rescue Agreement and the Liability Convention on 24 February 2016, and that consequently those treaties at present had 95 and 93 States parties, respectively. The view was expressed that the rule of law in space was the cornerstone that could ensure the use of outer space for peaceful purposes, and that the five United Nations treaties on outer space had been instrumental in promoting space activities and must be adhered to and implemented in accordance with relevant Security Council resolutions. The view was expressed that the launch by the Democratic People's Republic of Korea using ballistic missile technology was a serious violation of relevant Security Council resolutions and was in contravention of the spirit and purpose of the Outer Space Treaty.[150]

Regarding matters related to the definition and delimitation of outer space and the character and utilization of geostationary orbit, the Subcommittee reconvened its Working Group on the Definition and Delimitation of Outer Space and endorsed the report of the Working Group.[151] The Subcommittee agreed to reconvene the Working Group at its fifty-sixth session.

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[148] For the Report of the Legal Subcommittee, see A/AC.105/1113.

[149] 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.105/1113, Annex I.

[150] *Ibid.*, paras. 66–68.

[151] See Report of the Chair of the Working Group on the Definition and Delimitation of Outer Space, A/AC.105/1113, Annex II.

Regarding the agenda item entitled "National legislation relevant to the peaceful exploration and use of outer space", the Subcommittee agreed that the discussions under the item were important and that they enabled States to gain an understanding of existing national regulatory frameworks, share experiences on national practices and exchange information on national legal frameworks, and encouraged member States to continue to submit to the Secretariat texts of their national space laws and regulations and to provide updates and inputs for the schematic overview of national regulatory frameworks for space activities.[152]

Under the agenda item "Capacity-building in space law", the Subcommittee noted with satisfaction that the Office for Outer Space Affairs had updated the directory of education opportunities in space law,[153] including with information on available fellowships and scholarships, and recommended that States members and permanent observers of the Committee inform the Subcommittee, at its fifty-sixth session, of any action taken or planned at the national, regional or international level to build capacity in space law.[154]

As for agenda item "Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space", some delegations expressed the view that a review panel, composed of competent and relevant experts, should be established to perform an assessment of the principles and submit its findings to the Legal Subcommittee. This view was then complemented with another one which expressed that the establishment of an independent nuclear safety review panel to regulate the use of nuclear power sources in outer space could be considered.[155]

Under the agenda item "General exchange of information and views on legal mechanisms relating to space debris mitigation measures, taking into account the work of the Scientific and Technical", the Subcommittee agreed that States members of the Committee and international intergovernmental organizations having permanent observer status with the Committee should be invited to further contribute to the compendium of space debris mitigation standards adopted by States and international organizations by providing or updating the information on any legislation or standards adopted with regard to space debris mitigation, using the template provided for that purpose. The Subcommittee also agreed that all other States Members of the United Nations should be invited to contribute to the compendium, and encouraged States with such regulations or standards to provide information on them.[156]

Under agenda item "General exchange of information on non-legally binding United Nations instruments on outer space", the Subcommittee agreed that this item should be retained on the agenda of the Subcommittee at its fifty-sixth session.[157]

Regarding the agenda item "General exchange of views on the legal aspects of space traffic management", the Subcommittee noted that consideration of the concept of space traffic management was of growing importance for all nations, and that a number of

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[152] See Report of the Chair of the Working Group on the Definition and Delimitation of Outer Space, A/AC.105/1113, paras. 120–121.

[153] A/AC.105/C.2/2016/CRP.8.

[154] A/AC.105/1113, paras. 136–137.

[155] *Ibid.,* paras. 150–154.

[156] *Ibid.,* para. 187.

[157] *Ibid.,* para. 202.

measures being undertaken at both the national and international levels were essential to improving the safety and sustainability of space flight. The Subcommittee agreed that a continued exchange of information on best practices and standards associated with the management of space operations was essential.[158]

On the new agenda item entitled "General exchange of views on the application of international law to small satellite activities", the Subcommittee noted with regard to small satellite activities a number of legal challenges, as well as existing and emerging practices and regulatory frameworks. The Subcommittee also noted the programmes of States and international organizations in the field of the development and use of small satellites. The Subcommittee agreed that in order to ensure the safe and responsible use of outer space in the future, it was important to include small satellite missions appropriately in the scope of application of international and national regulatory frameworks.[159] The Subcommittee requested the Secretariat to prepare a questionnaire, to be addressed to member States and permanent observers of the Committee, containing a set of questions addressing the practice of the development and use of small satellites, as well as policy and legal aspects of their use. The Subcommittee noted that the Secretariat would present the draft questionnaire to the Committee in a conference room paper at its fifty-ninth session, in June 2016.[160]

Regarding the agenda item "Review of international mechanisms for cooperation in the peaceful exploration and use of outer space", the Subcommittee reconvened its Working Group on the Review of International Mechanisms for Cooperation in the Peaceful Exploration and Use of Outer Space and endorsed the report of the Chair of the Working Group.[161] The Subcommittee agreed that the review of the mechanisms for cooperation in space activities would continue to assist States in understanding the different approaches to cooperation in space activities and would contribute to the further strengthening of regional, interregional and international cooperation in the exploration and peaceful uses of outer space. In that regard, the Subcommittee reiterated that 2017, which, under its workplan, was the final year of consideration of the agenda item, would coincide with the fiftieth anniversary of the Outer Space Treaty.[162]

Concerning future work, the Subcommittee agreed that five single issues/items for discussion, entitled "Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space", "General exchange of information and views on legal mechanisms relating to space debris mitigation measures, taking into account the work of the Scientific and Technical Subcommittee", "General exchange of information on non-legally binding United Nations instruments on outer space", "General exchange of views on the legal aspects of space traffic management" and "General exchange of views on the application of international law to small satellite activities", should be retained on the agenda of the Subcommittee at its fifty-sixth session.[163] The Subcommittee further decided that a new single issue/item for discussion, entitled "General exchange of views

[158] A/AC.105/1113, paras. 205–206.

[159] *Ibid.*, paras. 224–225.

[160] *Ibid.*, para. 231.

[161] *Ibid.*, annex III.

[162] *Ibid.*, para. 246.

[163] *Ibid.*, para. 249.

on potential legal models for activities in exploration, exploitation and utilization of space resources", should be included on the agenda at its fifty-sixth session.[164]

(*b*) General Assembly

On 5 December 2016, upon the recommendation of the First Committee, the General Assembly adopted resolution 71/42 entitled "Transparency and confidence-building measures in outer space activities" without a vote. On 6 December 2016, upon the recommendation of the Fourth Committee, the Assembly adopted resolution 71/90 entitled "International cooperation in the peaceful uses of outer space" without a vote.

5. Human rights[165]

(*a*) Sessions of the United Nations human rights bodies and treaty bodies

(i) *Human Rights Council*

The Human Rights Council, established in 2006,[166] meets as a quasi-standing body in three annual regular sessions and additional special sessions as needed. Reporting to the General Assembly, its agenda and programme of work provide the opportunity to discuss all thematic human rights issues and human rights situations that require the attention of the Assembly.

The Council's mandate includes the review on a periodic basis of the fulfilment of the human rights obligations of all Member States, including the members of the Council, over a cycle of four years through the universal periodic review.[167] 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

[164] A/AC.105/1113, para. 250.

[165] This section covers the resolutions adopted, if any, by the Security Council, the General Assembly and the Economic and Social Council. It 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, the Committee on the Elimination of Discrimination Against Women, the Committee Against Torture, the 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 https://www.ohchr.org.

[166] 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.

[167] The first universal periodic review cycle covered the period 2008–2011. The second universal periodic review cycle commenced in 2012 and finished in September 2016. For a list of States included and calendar of review sessions, see the section Universal Periodic Review at the homepage of the Human Rights Council at https://www.ohchr.org.

the establishment of these special procedures.[168] 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.[169]

In 2016, the Human Rights Council held its thirty-first, thirty-second and thirty-third regular sessions,[170] its twenty-fifth special session on "The deteriorating situation of human rights in the Syrian Arab Republic, and the recent situation in Aleppo"[171] and its twenty-sixth special session on "Human Rights situation in South Sudan".[172]

(ii) *Human Rights Council Advisory Committee*

The Human Rights Council Advisory Committee was established pursuant to Human Rights Council resolution 5/1 of 18 June 2007.[173] The Advisory Committee is composed of eighteen experts, and functions as a think-tank for the Council, working under its direction and providing expertise in the manner and form requested by the Council, focusing mainly on studies and research-based advice, suggestions for further enhancing its procedural efficiency, as well as further research proposals within the scope of the work set out by the Council. The Advisory Committee held its sixteenth and seventeenth sessions from 22 to 26 February 2016 and from 8 to 12 August 2016, respectively.[174]

(iii) *Human Rights Committee*

The Human Rights Committee was established under the International Covenant on Civil and Political Rights of 1966[175] to monitor the implementation of the Covenant and its Optional Protocols[176] in the territory of States parties. The Committee held its 116th, 117th and 118th sessions in Geneva from 7 to 31 March, from 20 June to 15 July, and from 17 October to 4 November 2016, respectively.[177] The Committee did not adopt a general comment in 2016.

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[168] Human Rights Council decision 1/102 of 30 June 2006.

[169] More detailed information on the mandate, work and methods of the Human Rights Council is available at the homepage of the Human Rights Council at https://www.ohchr.org.

[170] For the reports of the thirty-first and thirty-second sessions, see *Official Records of the General Assembly, Seventy-first Session, Supplement No. 53* (A/71/53). For the report of the thirty-third session, see *ibid*., *Supplement No. 53* (A/71/53/Add.1).

[171] For report of the twenty-fifth special session, see *ibid*., *Supplement No. 53* (A/71/53/Add.2).

[172] For report of the twenty-sixth special session, see *Official Records of the General Assembly, Seventy-second Session, Supplement No. 53* (A/72/53).

[173] 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.

[174] For the reports of the Advisory Committee on its sixteenth and seventeenth sessions, see A/HRC/AC/16/2 and A/HRC/AC/17/2, respectively.

[175] United Nations, *Treaty Series*, vol. 999, p. 171.

[176] 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.

[177] For the report of the 116th session, see *Official Records of the General Assembly, Seventieth-first Session, Supplement No. 40* (A/71/40). For the report of the 117th and 118th sessions, see *ibid*.,

(iv) *Committee on Economic, Social and Cultural Rights*

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council[178] to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights of 1966[179] by its States parties. The Committee held its fifty-seventh, fifty-eighth and fifty-ninth sessions in Geneva from 22 February to 4 March, from 6 to 24 June, and from 19 September to 7 October 2016, respectively.[180] The Committee adopted two General comments in 2016, namely general comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)[181] and general comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights).[182]

(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[183] to monitor the implementation of this Convention by its States parties. The Committee held its eighty-ninth, ninetieth and ninety-first sessions in Geneva from 25 April to 13 May, from 2 to 26 August, and from 21 November to 9 December 2016, respectively.[184] The Committee did not adopt a general recommendation in 2016.

(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[185] to monitor the implementation of this Convention by its States parties. The Committee held its sixty-third, sixty-fourth and sixty-fifth sessions in Geneva from 15 February to 4 March, from 4 to 22 July, and from 24 October to 18 November 2016, respectively.[186] The Committee adopted general recommendation No. 34 on the rights of rural women.[187]

Seventieth-second Session, Supplement No. 40 (A/72/40).

[178] Economic and Social Council resolution 1985/17 of 28 May 1985.

[179] United Nations, *Treaty Series*, vol. 993, p. 3.

[180] For the reports of the fifty-seventh, fifty-eighth, and fifty-ninth sessions, see *Official Records of the Economic and Social Council, 2017, Supplement No. 2* (E/2017/22).

[181] E/C.12/GC/22.

[182] E/C.12/GC/23.

[183] United Nations, *Treaty Series*, vol. 660, p. 195.

[184] For the report of the eighty-ninth session, see *Official Records of the General Assembly, Seventieth-first Session, Supplement No. 18* (A/71/18). For the reports of the ninetieth and the ninety-first sessions, see *ibid.*, *Seventieth-second Session, Supplement No. 18* (A/72/18).

[185] United Nations, *Treaty Series*, vol. 1249, p. 13.

[186] For the report of the sixty-third session, see *Official Records of the General Assembly, seventieth-first Session, Supplement No. 38* (A/71/38). For the reports of the sixty-fourth and sixty-fifth session see *ibid., Seventieth-second Session, Supplement No. 38* (A/72/38).

[187] CEDAW/C/GC/34.

(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[188] to monitor the implementation of the Convention by its States parties. The Committee held its fifty-seventh, fifty-eighth and fifty-ninth sessions in Geneva from 18 April to 13 May, from 25 July to 12 August, and from 7 November to 7 December 2016, respectively.[189] The Committee did not adopt a general comment in 2016.

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,[190] held its twenty-eighth, twenty-ninth, and thirtieth sessions from 15 to 19 February, from 13 to 17 June, and from 14 to 18 November 2016, respectively.[191]

(viii) *Committee on the Rights of the Child*

The Committee on the Rights of the Child was established under the Convention on the Rights of the Child of 1989[192] to monitor the implementation of this Convention by its States parties. The Committee held its seventy-first, seventy-second and seventy-third sessions in Geneva from 11 to 29 January, from 17 May to 3 June, and from 13 to 30 September 2016, respectively.[193] The Committee did not adopt a general comment in 2016.

(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[194] to monitor the implementation of this Convention by its States parties in their territories. The Committee held its twenty-fourth and twenty-fifth sessions in Geneva from 11 to 22 April and from 29 August to 7 September 2016, respectively.[195] The Committee did not adopt a general comment in 2016.

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[188] United Nations, *Treaty Series*, vol. 1465, p. 85.

[189] For the report of the fifty-seventh session, see *Official Records of the General Assembly, Seventieth-first Session, Supplement No. 44* (A/71/44). For the reports of the fifty-eighth and fifty-ninth sessions, see *ibid., Seventy-second Session, Supplement No. 44* (A/72/44).

[190] United Nations, *Treaty Series,* vol. 2375, p. 237.

[191] For details of the twenty-eighth, twenty-ninth and thirtieth sessions, see the tenth annual report of the Subcommittee (CAT/C/60/3).

[192] United Nations, *Treaty Series*, vol. 1577, p. 3.

[193] For the report of the seventieth-first, see *Official Records of the General Assembly, Seventy-first Session, Supplement No. 41* (A/71/41). For the report of the seventieth-second and seventieth-third session, see *ibid., Seventy-third Session, Supplement No. 41* (A/73/41).

[194] United Nations, *Treaty Series*, vol. 2220, p. 3.

[195] For the report of the twenty-fourth session, see *Official Records of the General Assembly, Seventieth-first Session, Supplement No. 48* (A/71/48). For the report of the twenty-fifth session, see *ibid., Seventy-second Session, Supplement No. 48* (A/72/48).

(x) *Committee on the Rights of Persons with Disabilities*

The Committee on the Rights of Persons with Disabilities is the body of independent experts established under the Convention on the Rights of Persons with Disabilities of 2006[196] and its 2006 Optional Protocol[197] to monitor the implementation of the Convention and the Optional Protocol by States parties. In 2016, the Committee held its fifteenth and sixteenth sessions in Geneva from 29 March to 21 April and from 15 August to 2 September, respectively.[198] On 26 August 2016, the Committee adopted two general comments, namely general comment No. 3 (2016) on "Women and girls with disabilities"[199] (article 6) and general comment No. 4 (2016) on "The right to inclusive education"[200] (article 24).

(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 of 2006[201] to monitor the implementation of the Convention by its State parties. In 2016, the Committee held its tenth and eleventh sessions in Geneva from 7 to 18 March and from 3 to 14 October, respectively.[202] The Committee did not adopt a general comment in 2016.

(*b*) Racism, racial discrimination, xenophobia and related intolerance

(i) *Human Rights Council*

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, submitted to the Human Rights Council a report on combating glorification of Nazism, neo-nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance,[203] pursuant to General Assembly resolution 70/139. In the report, the Special Rapporteur addressed developments with regard to the continuing human rights and democratic challenges posed by extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements.

The Special Rapporteur, pursuant to Human Rights Council resolution 25/32, also submitted a report to the Human Rights Council focusing on the phenomenon of xenophobia and its conceptualization, trends and manifestations.[204] In the report, the Special

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[196] United Nations, *Treaty Series*, vol. 2515, p. 3.

[197] *Ibid.,* vol. 2518, p. 283.

[198] For the reports of the fifteenth and sixteenth sessions, see *Official Records of the General Assembly, Seventy-second Session, Supplement No. 55* (A/72/55).

[199] CRPD/C/GC/3.

[200] CRPD/C/GC/4.

[201] General Assembly resolution 61/177 of 20 December 2006, annex.

[202] For the report of the tenth session see *Official Records of the General Assembly, Seventieth-first Session, Supplement No. 56* (A/71/56). For the report of the eleventh session, see *ibid*., *Seventy-second Session, Supplement No. 56* (A/72/56).

[203] A/HRC/32/49.

[204] A/HRC/32/50.

Rapporteur attempted to bring clarity to the concept of xenophobia, provided an overview of the different applicable norms and frameworks prohibiting xenophobia that had been adopted at the international, regional and national level, and discussed manifestations of the phenomenon of xenophobia.

On 24 March 2016, the Human Rights Council adopted, without a vote, resolution 31/26 entitled "Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief".[205] On 1 July 2016, the Human Rights Council adopted, without a vote, resolution 32/17 entitled "Addressing the impact of multiple and intersecting forms of discrimination and violence in the context of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of all human rights by women and girls".[206]

(ii) *General Assembly*

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, submitted a report to the General Assembly, pursuant to General Assembly resolution 70/139, on combating glorification of Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance, based on views collected from Governments and non-governmental organizations.[207]

The Secretary-General submitted three reports to the General Assembly, entitled "Programme of activities for the implementation of the International Decade for People of African Descent",[208] "A global call for concrete action 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",[209] and "Status of the International Convention on the Elimination of All Forms of Racial Discrimination".[210] The Secretary-General also submitted to the General Assembly a note on the Group of Independent eminent experts on the implementation of the Durban Declaration and Programme of Action,[211] and transmitted to the General Assembly the report of the Working Group of Experts on People of African Descent.[212]

On 19 December 2016, upon recommendation of the Third Committee, the General Assembly adopted three resolutions related to this topic: resolution 71/179 entitled "Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance", by a recorded vote of 136 to 2, with 49 abstentions; resolution 71/180 entitled "International Convention on the Elimination of All Forms of Racial Discrimination",

[205] A/HRC/RES/31/26.

[206] A/HRC/RES/32/17.

[207] A/71/325.

[208] A/71/290.

[209] A/71/399.

[210] A/71/327.

[211] A/71/288.

[212] A/71/297.

without a vote; and resolution 71/181 entitled "A global call for concrete action 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", by a recorded vote of 133 to 9, with 45 abstentions.

(*c*) Right to development and poverty reduction

(i) *Extreme poverty and right to development*

a. Human Rights Council

The Special Rapporteur on extreme poverty and human rights, Philip Alston, submitted a report to the Human Rights Council.[213] In the report, the Special Rapporteur argued that treating economic and social rights as human rights was essential both for efforts to eliminate extreme poverty and to ensure a balanced and credible approach in the field of human rights as a whole, and that economic and social rights currently remained marginal in most contexts, thus undermining the principle of the indivisibility of the two sets of rights.

The Secretary-General and the United Nations High Commissioner for Human Rights submitted a report to the Human Rights Council relating to the promotion and realization of the right to development.[214]

On 23 March 2016, the Human Rights Council adopted resolution 31/4 entitled "Commemoration of the thirtieth anniversary of the Declaration on the Right to Development", without a vote. On 29 September 2016, the Human Rights Council adopted resolution 33/14 entitled "The right to development", by a recorded vote of 34 to 2, with 11 abstentions.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on extreme poverty and human rights.[215]

In accordance with General Assembly resolution 70/218 of 22 December 2015, the Secretary-General submitted a report entitled "Implementation of the Second United Nations Decade for the Eradication of Poverty (2008–2017)" to the General Assembly.[216]

On 19 December 2016, upon recommendation of the Third Committee, the General Assembly adopted resolution 71/186 entitled "Human rights and extreme poverty", without a vote. On 21 December 2016, upon recommendation of the Second Committee, the General Assembly adopted, without a vote, resolution 71/240 entitled "Promotion of sustainable tourism, including ecotourism, for poverty eradication and environment protection" and resolution 71/241 entitled "Second United Nations Decade for the Eradication of Poverty (2008–2017)".

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[213] A/HRC/32/31.

[214] A/HRC/33/31.

[215] A/71/367.

[216] A/71/181.

(*d*) Right of peoples to self-determination

(i) *Universal realization of the right of peoples to self-determination*

a. Human Rights Council

On 24 March 2016, the Human Rights Council adopted resolution 31/33 entitled "Right of the Palestinian people to self-determination", without a vote.

b. General Assembly

On 30 November 2016, without reference to a main committee, the General Assembly adopted resolution 71/20 entitled "Committee on the Exercise of the Inalienable Rights of the Palestinian People", by a recorded vote of 100 to 9, with 55 abstentions.

On 6 December 2016, upon recommendation of the Fourth Committee, the General Assembly adopted resolution 71/121 entitled "Dissemination of information on decolonization", by a recorded vote of 174 to 3, with 2 abstentions, and resolution 71/122 entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples", by a recorded vote of 171 to 5, with 4 abstentions.

On 19 December 2016, upon recommendation of the Third Committee, the General Assembly adopted resolution 71/183 entitled "Universal realization of the right of peoples to self-determination", without a vote, and resolution 71/184 entitled "The right of the Palestinian people to self-determination", by a recorded vote of 177 to 7, with 4 abstentions.

(ii) *Mercenaries*

a. Human Right 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, presenting the findings of its ongoing global study of national laws and regulations relating to private military and/or security companies (PMSCs).[217]

On 29 September 2016, the Council adopted resolution 33/4 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 32 to 13, with 2 abstentions.

b. General Assembly

In accordance with Commission on Human Rights resolution 2005/2 of 7 April 2005, 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.[218] The report used an historical perspective, tracing the evolution of the phenomena of mercenarism and foreign fighters and thus allowing for a closer examination of similarities and differences in the motivations, recruitment and regulation of both types of actors motivation and recruitment practices,

[217] A/HRC/33/43.

[218] A/71/318.

the linkages between foreign fighters and mercenaries, and the human rights implications of the presence of foreign fighters.

On 19 December 2016, upon recommendation of the Third Committee, the General Assembly adopted resolution 71/182 entitled "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 132 to 53, with 4 abstentions.

(*e*) Economic, social and cultural rights

Human Rights Council

On 23 March 2016, the Human Rights Council adopted resolution 31/5 entitled "Question of the realization in all countries of economic, social and cultural rights", without a vote.

(i) *Right to food*

a. Human Rights Council

The Special Rapporteur on the right to food, Hilal Elver, submitted a report to the Human Rights Council in accordance with its resolution 22/9 on the right to food.[219]

On 23 March 2016, the Human Rights Council adopted resolution 31/10 entitled "The right to food", without a vote. On 30 June 2016, it adopted resolution 32/8 entitled "Mandate of the Special Rapporteur on the right to food", without a vote.

b. General Assembly

The Secretary-General transmitted to the General Assembly the interim report of the Special Rapporteur on the right to food.[220] The report outlined the underlying factors of malnutrition and the challenges of global nutrition governance.

On 19 December 2016, upon recommendation of the Third Committee, the General Assembly adopted resolution 71/191 entitled "The right to food" without a vote.

(ii) *Right to education*

a. Human Rights Council

The Special Rapporteur on the right to education, Kishore Singh, submitted his annual report to the Human Rights Council pursuant to its resolution 27/17.[221] The report addressed issues and challenges to the right to education in the digital age, with a focus on higher education, and considered how the norms and principles of the right to education should be upheld while embracing digital technologies.

On 24 March 2016, the Human Rights Council adopted resolution 31/21 entitled "Human rights education and training", without a vote. On 1 July 2016, the Human

[219] A/HRC/31/51.

[220] A/71/282.

[221] A/HRC/32/37.

Rights Council adopted resolution 32/20 entitled "Realizing the equal enjoyment of the right to education by every girl and resolution 32/22 entitled "The right to education"[222], without a vote.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on the right to education,[223] which focused on lifelong learning and the right to education, and offered recommendations with a view to promoting learning as a right and its pursuit from a lifelong learning perspective, in keeping with State obligations as set out in international human rights instruments.

(iii) *Right to adequate standard of living, including adequate housing*

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, Leilani Farha, submitted her report to the Human Rights Council.[224] The Special Rapporteur considered homelessness as a global human rights crisis directly linked to increased inequality of wealth and property, requiring urgent attention, and outlined a clear set of obligations on States under international human rights law that, if complied with, would eliminate homelessness. The Special Rapporteur also proposed a global campaign to eliminate homelessness by 2030.

On 23 March 2016, the Human Rights Council adopted resolution 31/9 entitled "Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context", without a vote.

b. General Assembly

The Secretary-General transmitted to the General Assembly the 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,[225] which focused on the dependence between the right to adequate housing and the right to life and on the need to reunify both rights under one same approach.

(iv) *Access to safe drinking water and sanitation*

a. Human Rights Council

In accordance with Human Rights Council resolution 24/18 of 27 September 2013, the Special Rapporteur on the human right to safe drinking water and sanitation, Léo Heller,

[222] A/HRC/RES/32/22.

[223] A/71/358.

[224] A/HRC/31/54.

[225] A/71/310.

submitted his report to the Human Rights Council.[226] The report focused on gender equality in the realization of the human rights to water and sanitation.

On 29 September 2016, the Human Rights Council adopted resolution 33/10 entitled "The human rights to safe drinking water and sanitation", by a recorded vote of 42 to 1, with 4 abstentions.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on the human right to safe drinking water and sanitation, Léo Heller, submitted pursuant to Human Rights Council resolution 24/18.[227] The report discussed development cooperation in the water and sanitation sector, assessing the roles that it could and should play in the realization of the human rights to water and sanitation.

(v) *Right to health*

a. Human Rights Council

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Puras, submitted two reports to the Human Rights Council.[228] In his first report, the Special Rapporteur discussed mental health, the rights to sexual and reproductive health, and substance use and drug control, in view of the particular challenges they pose in balancing adolescents' emerging autonomy with their right to protection. In his second report, the Special Rapporteur explored the obligations of Member States of the United Nations and non-State actors regarding sport and healthy lifestyles as contributing factors to the right to health, with a focus on sport and physical activity.

Pursuant to Human Rights Council resolution 30/4, the Expert Mechanism on the Rights of Indigenous Peoples presented a study on the right to health and indigenous peoples with a focus on children and youth,[229] which consisted of a critical analysis of the content of the right to health *vis-à-vis* indigenous peoples and a review of the legal obligations of States and others in terms of fulfilling that right.

On 1 July 2016, the Human Rights Council adopted, without a vote, resolution 32/15 entitled "Access to medicines in the context of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health", resolution 32/16 entitled "Promoting the right of everyone to the enjoyment of the highest attainable standard of physical and mental health through enhancing capacity-building in public health", and resolution 32/18 entitled "Mental health and human rights". On 29 September 2016, the Human Rights Council adopted resolution 33/9 entitled "The right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

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[226] A/HRC/33/49.

[227] A/71/302.

[228] A/HRC/32/32 and A/HRC/32/33.

[229] A/HRC/33/57.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.[230] In the report, the Special Rapporteur highlighted the mutually reinforcing complementarities between the 2030 Agenda for Sustainable Development and the Sustainable Development Goals and the right to health, illustrated how the right to health could help to address critical implementation gaps within the Sustainable Development Goals framework.

(vi) *Cultural rights*

a. Human Rights Council

The Special Rapporteur in the field of cultural rights, Karima Bennoune, submitted her report to the Human Rights Council. [231] The report reflected on the valuable work undertaken from 2009 to 2015 by the previous Special Rapporteur and began the process of building on that foundation. It highlighted priority areas in which the Special Rapporteur believed further advances should be made.

On 23 March 2016, the Human Rights Council adopted resolutions 31/12, entitled "Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity", without a vote. On 30 September 2016, the Human Rights Council adopted resolution 33/20, entitled "Cultural rights and the protection of cultural heritage", without a vote.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur in the field of cultural rights.[232] The report addressed the intentional destruction of cultural heritage, in conflict and non-conflict situations, by States and non-State actors. It examined the impact of such destruction on a range of human rights, including the right to take part in cultural life and called for an effective national and international strategies for preventing and holding accountable those alleged to have taken part in such destruction.

(*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, Juan Méndez, submitted his report to the Human Rights Council.[233] The report focused on the applicability of the prohibition of torture and other cruel, inhuman

[230] A/71/304.

[231] A/HRC/31/59.

[232] A/71/317.

[233] A/HRC/31/57.

or degrading treatment or punishment in international law to the unique experiences of women, girls, and lesbian, gay, bisexual, transgender and intersex persons.

On 24 March 2016, the Human Rights Council adopted, without a vote, resolution 31/31 entitled "Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pretrial detention".[234]

b. General Assembly

The Secretary-General submitted a report on the United Nations Voluntary Fund for Victims of Torture[235] to the General Assembly, which described the outcome of the forty-third session of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, in particular the expert workshop of practitioners on redress and rehabilitation of victims of torture in emergency contexts and long-term needs of victims. The Secretary-General also transmitted to the General Assembly the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.[236] The report addressed the legal, ethical, scientific and practical arguments against the use of torture, other ill-treatment and coercive methods during interviews of suspects, victims, witnesses and other persons in various investigative contexts. In addition, the subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted its ninth annual report,[237] which was transmitted by the Secretary-General to the General Assembly.[238]

(ii) *Arbitrary detention, persons deprived of liberty, and extrajudicial, summary and arbitrary execution*

a. Human Rights Council

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, submitted their joint report to the Human Rights Council.[239] The report presented a compilation of practical recommendations for the proper management of assemblies.

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, submitted his report to the Human Rights Council.[240] The report provided a short commentary on the process of updating the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (known as the Minnesota Protocol) and surveyed the standards for the use of force by private security providers in law enforcement contexts.

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[234] A/HRC/RES/31/31.

[235] A/71/289.

[236] A/71/298.

[237] CAT/C/57/4 and Corr.1.

[238] A/71/341.

[239] A/HRC/31/66.

[240] A/HRC/32/39.

On 30 September 2016, the Human Rights Council adopted resolution 33/30 entitled "Arbitrary detention", by a recorded vote of 46 to 0, with 1 abstention.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,[241] in which the Special Rapporteur provided an overview of his activities since the submission of his previous report and offered a review of some of the subjects considered over the six years of his mandate.

On 19 December 2016, upon recommendation of the Third Committee, the General Assembly adopted resolution 71/198 entitled "Extrajudicial, summary or arbitrary executions", by a recorded vote of 125 to 2, with 56 abstentions.

(iii) *Enforced disappearances and missing persons*

a. Human Rights Council

The Working Group on Enforced or Involuntary Disappearances[242] submitted its annual report to the Human Rights Council,[243] detailing the activities of and communications and cases examined by the Working Group on Enforced or Involuntary Disappearances covering the period 16 May 2015 to 18 May 2016.

b. General Assembly

Pursuant to General Assembly resolution 70/160, the Secretary-General submitted to the General Assembly a report entitled "International Convention for the Protection of All Persons from Enforced Disappearance",[244] containing information on the activities carried out in relation to the implementation of the resolution by Member States, the Secretary-General, the United Nations High Commissioner for Human Rights and his Office, the Committee on Enforced Disappearances, the Working Group on Enforced or Involuntary Disappearances and intergovernmental and non-governmental organizations.

The Committee on Enforced Disappearances also submitted the reports of its tenth and eleventh sessions to the General Assembly.[245]

On 19 December 2016, the General Assembly adopted, upon recommendation of the Third Committee, resolution 71/201 entitled "Missing persons", without a vote.

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[241] A/71/372.

[242] The mandate was most recently extended by the Human Rights Council in its resolution 27/1 of 25 September 2014.

[243] A/HRC/33/51.

[244] A/71/278.

[245] For the reports of the tenth session, see *Official Records of the General Assembly, Seventy-first Session, Supplement No. 56* (A/71/56). For the report of the eleventh session, see *ibid., Seventy-second Session, Supplement No. 56* (A/72/56).

(iv) *Integration of human rights of women and a gender perspective*[246]

a. Human Rights Council

The Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, submitted a report to the Human Rights Council.[247] The report provided an overview of the legally binding provisions, implementing mechanisms and relevant jurisprudence regarding violence against women and set out the thematic priorities of her intended action. In particular, the report focused on the use of data on violence against women as a tool for its prevention.

The Working Group on the issue of discrimination against women in law and in practice also submitted a report to the Human Rights Council.[248] The report addressed the issue of discrimination against women with regard to health and safety.

The Office of the United Nations High Commissioner for Human Rights also submitted a report to the Council.[249] The report focused on violence against indigenous women and girls and on women's rights under the 2030 Agenda for Sustainable Development.

On 30 June 2016, the Human Rights Council adopted, without a vote, resolution 32/4 entitled "Elimination of discrimination against women" and resolution 32/7 entitled "The right to a nationality: women's equal nationality rights in law and in practice". On 1 July, the Human Rights Council adopted resolution 32/19 entitled "Accelerating efforts to eliminate violence against women: preventing and responding to violence against women and girls, including indigenous women and girls", without a vote.

b. General Assembly

On 5 December 2016, upon recommendation of the First Committee, the General Assembly adopted resolution 71/56 entitled "Women, disarmament, non-proliferation and arms control resolutions", without a vote. On 19 December 2016, the General Assembly adopted resolution 71/170 entitled "Intensification of efforts to prevent and eliminate all forms of violence against women and girls: domestic violence", on the recommendation of the Third Committee and without a vote.

(v) *Trafficking*

a. Human Rights Council

The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, submitted her annual report to the Human Rights Council.[250] In the report, the Special Rapporteur outlined her activities undertaken during the period under review and presented a thematic report on the subject of trafficking in

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[246] For more information on the rights of women, see section 6 of this chapter.

[247] A/HRC/32/42 and A/HRC/32/42/Corr.1.

[248] A/HRC/32/44.

[249] A/HRC/33/68.

[250] A/HRC/32/41 and Corr.1.

persons in conflict and post-conflict situations: protecting victims of trafficking and people at risk of trafficking, especially women and children.

On 30 June 2016, The Human Rights Council adopted resolution 32/3, entitled "Trafficking in persons, especially women and children: protecting victims of trafficking and persons at risk of trafficking, especially women and children in conflict and post-conflict situations", without a vote.

b. General Assembly

The Secretary-General transmitted to the General-Assembly the report of the Special Rapporteur on trafficking in persons, especially women and children.[251] The report raised international awareness of the forms and nature of trafficking related to the complex situation of conflict.

On 19 December 2016, upon recommendation of the Third Committee, the General Assembly adopted resolution 71/167 entitled "Trafficking in women and girls", without a vote.

(vi) *Freedom of religion or belief, expression and assembly*

a. Human Rights Council

The Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, submitted a report[252] to the Human Rights Council which analysed the relationship between the right to freedom of religion or belief and the right to freedom of opinion and expression.

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, submitted his annual report to the Council, on the intersection of State regulation, the private sector and freedom of expression in a digital age.[253]

The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, submitted his report to the Council addressing the phenomenon of fundamentalism and its impact on the exercise of the rights to freedom of peaceful assembly and of association by examining the positive role that assembly and association rights can play in preventing the spread of extremism and radicalization.[254]

On 23 March 2016, the Human Rights Council adopted resolution 31/16, entitled "Freedom of religion or belief", without a vote. On 24 March 2016, the Human Rights Council adopted resolution 31/37 entitled "The promotion and protection of human rights in the context of peaceful protests", by a recorded vote of 31 to 5, with 10 abstentions. On 1 July 2016, the Human Rights Council adopted resolution 32/32 entitled "The rights to freedom of peaceful assembly and of association", without a vote.

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[251] A/71/303.

[252] A/HRC/31/18.

[253] A/HRC/32/38.

[254] A/HRC/32/36 and Add.1–5.

b. General Assembly

The Secretary-General transmitted to the General Assembly the interim report of the Special Rapporteur on freedom of religion or belief, in accordance with General Assembly resolution 70/158.[255] In his report, the Special Rapporteur focused on the broad range of violations of freedom of religion or belief and their manifold root causes, as well as additional variables, including from a gender perspective, which needed to be taken into account for an appropriate analysis of the problems.

The Secretary-General submitted to the General Assembly a report on steps taken by States to combat intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief.[256]

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.[257] The report addressed some contemporary challenges to freedom of expression while assessing trends relating to the permissible restrictions laid out in article 19, paragraph 3, of the International Covenant on Civil and Political Rights. It concluded with recommendations that the United Nations, States and civil society might take to promote and protect freedom of opinion and expression.

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association[258]. The report addressed the exercise and enjoyment of the rights to freedom of peaceful assembly and of association in the workplace, with a focus on the most marginalized portions of the world's labour force, including global supply chain workers, informal workers, migrant workers, domestic workers and others.

On 19 December 2016, upon recommendation of the Third Committee, the General Assembly adopted resolution 71/195 entitled "Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief" and resolution 71/196 entitled "Freedom of religion or belief", without a vote.

(vii) *Right to life*

a. Human Rights Council

On 12 July 2016, the Secretary-General submitted a report to the Human Rights Council entitled "Question of the death penalty",[259] which confirmed that the trend towards the universal abolition of the death penalty was continuing.

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[255] A/71/269.

[256] A/71/369.

[257] A/71/373.

[258] A/71/385.

[259] A/HRC/33/20.

b. General Assembly

The Secretary-General submitted a report to the General Assembly regarding capital punishment entitled "Moratorium on the use of the death penalty".[260] The report discussed developments towards the abolition of the death penalty and the establishment of moratoriums on executions and the role of national human rights institutions and private companies, as well as regional and international initiatives for advancing the abolition of the death penalty.

On 19 December 2016, upon recommendation of the Third Committee, the General Assembly adopted resolution 71/187 entitled "Moratorium on the use of the death penalty", by a recorded vote of 117 to 40, with 31 abstentions.

(viii) *Right to privacy*

a. Human Rights Council

The Special Rapporteur on the right to privacy, Joseph A. Cannataci, submitted a report to the Human Rights Council,[261] in which he described his vision for the mandate, his working methods and provided an insight into the state of privacy at the beginning of 2016 and a work plan for the first three years of the mandate.

b. General Assembly

The Secretary-General transmitted to the General Assembly the first report of the Special Rapporteur on the right to privacy.[262] This report focused on outlining the first set of five priorities on which the Special Rapporteur had commenced work in parallel, namely Thematic Action Streams (TAS) on Big Data and Open Data; Security and Surveillance; Health Data; Personal data processed by corporations; and "A better understanding of Privacy".

On 19 December 2016, the General Assembly adopted resolution 71/199 entitled "The right to privacy in the digital age", without a vote. The Assembly reaffirmed, *inter alia*, the right to privacy, according to which no one should be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such interference, as set out in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights.

(ix) *Right to truth*

a. Human Rights Council

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, submitted his annual report to the Human Rights

[260] A/71/332.

[261] A/HRC/31/64.

[262] A/71/368.

Council.[263] In the report, which focused on national consultations processes, the Special Rapporteur addressed the participation of victims in transitional justice measures.

On 30 September 2016, the Human Rights council adopted resolution 33/19, entitled "Human rights and transitional justice", by a recorded vote of 29 to 1, with 17 abstentions.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.[264] This report focused on the issue of national consultations on the design and implementation of transitional justice measures.

(*g*) Rights of the child

a. Human Rights Council

The Special Representative of the Secretary-General for Children and Armed Conflict, Leila Zerrougui, submitted her annual report to the Human Right Council.[265] In the report, the Special Rapporteur outlined the activities undertaken in discharging her mandate and the progress achieved in addressing grave violations against children, including by addressing the impact of armed conflict on girls, the emerging and recurrent challenges related to the deprivation of liberty of children in situations of conflict, and progress in ending grave violations against children, in particular through direct engagement with parties to conflict.

The Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais, submitted her annual report to the Human Rights Council.[266] The report built upon the decision by the Assembly to renew the mandate of the Special Representative, and upon the opportunities provided by the adoption of the 2030 Agenda for Sustainable Development and the commemoration in 2016 of the tenth anniversary of the submission to the Assembly of the United Nations study on violence against children.

The Special Rapporteur on the sale of children, child prostitution and child pornography, Maud de Boer-Buquicchio, submitted two reports to the Council, which contained a thematic study on tackling the demand for the sexual exploitation of children and recommendations to reduce and eradicate the demand through prevention, accountability and rehabilitation measures[267] and a thematic study on illegal adoptions and recommendations on how to prevent and combat that phenomenon.[268]

The United Nations High Commissioner for Human Rights also submitted three reports to the Council. The first report analysed the human rights situation of migrants in

[263] A/HRC/34/62.

[264] A/71/567.

[265] A/HRC/34/44.

[266] A/HRC/31/20.

[267] A/HRC/31/58.

[268] A/HRC/34/55.

transit, highlighting human rights concerns as well as the relevant normative framework.[269] The second report analyzed the efforts made with regard to strengthening existing policies and programmes aimed at universal birth registration and vital statistics development and provided a summary of international legal obligations and its implementation status.[270] The third one analysed the ways in which the 2030 Agenda for Sustainable Development has the potential to support the realization of children's rights and presents an overview of relevant lessons from the implementation of the Millennium Development Goals.[271]

On 23 March 2016, the Human Rights Council adopted resolution 31/7 entitled "Rights of the child: information and communications technologies and child sexual exploitation", without a vote. On 30 June 2016, the Council adopted resolution 32/3 entitled "Trafficking in persons, especially women and children: protecting victims of trafficking and persons at risk of trafficking, especially women and children in conflict and post-conflict situations", without a vote. On 29 September 2016, the Council adopted, without a vote, resolution 33/7 entitled "Unaccompanied migrant children and adolescents and human rights", and resolution 33/11 entitled "Preventable mortality and morbidity of children under 5 years of age as a human rights concern". On 30 September 2016, the Council adopted resolution 33/18 entitled "Preventable maternal mortality and morbidity and human rights", without a vote.

b. General Assembly

The Secretary-General submitted six reports to the General Assembly, entitled "Children and armed conflict",[272] "Protecting children from bullying",[273] "Child, early and forced marriage",[274] "Collaboration within the United Nations system on child protection",[275] "Intensifying efforts to end obstetric fistula",[276] and "Status of the Convention on the Rights of the Child",[277] respectively.

The Special Representative of the Secretary-General for Children and Armed Conflict submitted her annual report to the General Assembly, pursuant to General Assembly resolution 69/157 of 18 December 2014.[278] The report covered the activities undertaken by the Special Representative in the period from August 2015 to July 2016.

The Special Representative of the Secretary-General on Violence against Children also submitted her annual report to the General Assembly, pursuant to General Assembly resolution 69/157 of 18 December 2014.[279] The report built on the 2030 Agenda for Sustainable Development and its target to end all forms of violence against children, and

[269] A/HRC/31/35.

[270] A/HRC/33/22.

[271] A/HRC/34/27.

[272] A/70/836–S/2016/360 and Add.1.

[273] A/71/213.

[274] A/71/253.

[275] A/71/277.

[276] A/71/306.

[277] A/71/413.

[278] A/71/205.

[279] A/71/206.

on the commemoration in 2016 of the tenth anniversary of the submission to the Assembly of the United Nations study on violence against children.

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on the sale of children, child prostitution and child pornography, in which she provided a study containing an analysis of the sale of children for the purpose of forced labour and proposes comprehensive measures to combat this phenomenon.[280]

On 19 December 2016, the General Assembly, on the recommendation of the Third Committee and without a vote, adopted resolution 71/175 entitled "Child, early and forced marriage", resolution 71/176 entitled "Protecting children from bullying", and resolution 71/177, entitled "Rights of the child".

c. Security Council

On 23 December 2016, the Security Council adopted resolution 2333 (2016), in which it addressed the impact of the conflict in Liberia on both women and children.

(*h*) Migrants

a. Human Rights Council

The Special Rapporteur on the human rights of migrants, François Crépeau, submitted his report to the Human Rights Council, in accordance with Human Rights Council resolution 17/12 of 17 June 2011.[281] The report expressed concern that trade liberalization had sometimes come at the expense of the human rights of migrants.

On 1 July 2016, the Human Rights Council adopted resolution 32/14 entitled "Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements", without a vote.

b. General Assembly

The Secretary-General submitted a report to the General Assembly entitled "Promotion and protection of human rights, including ways and means to promote the human rights of migrants".[282]

The Secretary-General also transmitted to the General Assembly the report of the Special Rapporteur on human rights of migrants,[283] which outlined proposals for the development of the global compact on migration, with a view, in particular, to ensuring that human rights were effectively included and mainstreamed therein.

On 30 June 2016, without a reference to a main Committee, the General Assembly adopted resolution 70/290 entitled "High-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants", without a vote. On 21 December 2016,

[280] A/71/261.

[281] A/HRC/32/40.

[282] A/71/284.

[283] A/71/285.

upon recommendation of the Second Committee, the General Assembly further adopted resolution 71/237 entitled "International migration and development", without a vote.

(*i*) Internally displaced persons

a. Human Rights Council

The Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, submitted his annual report to the Human Rights Council.[284] The report considered the progress made in key priority areas identified by the Special Rapporteur, and the major challenges relating to the human rights of internally displaced persons that required new or enhanced attention.

On 1 July 2016, the Human Rights Council adopted resolution 32/11 entitled "Mandate of the Special Rapporteur on the human rights of internally displaced persons", without a vote.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on the human rights of internally displaced persons.[285] The report provided for the outcomes and commitments on internal displacement of the World Humanitarian Summit held in Istanbul, Turkey, in May 2016, which provided a timely opportunity to consider how to better prevent and respond to humanitarian crises and meet the needs and protect the rights of those affected, including internally displaced persons.

On 7 June 2016, without a reference to a Main Committee, the General Assembly adopted resolution 70/265 entitled "Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia", by a recorded vote of 76 to 15, with 64 abstentions. On 8 December 2016, without a reference to a main Committee, the General Assembly adopted resolution 71/128 entitled "International cooperation on humanitarian assistance in the field of natural disasters, from relief to development", without a vote. On 19 December 2016, upon recommendation of the Third Committee, the General Assembly adopted resolution 71/173 entitled "Assistance to refugees, returnees and displaced persons in Africa", without a vote.

(*j*) Minorities

a. Human Rights Council

The Special Rapporteur on minority issues, Rita Izsák, submitted her report to the Human Rights Council,[286] which included a thematic analysis on the topic of minorities and discrimination based on caste and analogous systems of inherited status.

On 23 March 2016, the Human Rights Council adopted resolution 31/13 entitled "Rights of persons belonging to national or ethnic, religious and linguistic minorities", without a vote.

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[284] A/HRC/32/35.

[285] A/71/279.

[286] A/HRC/31/56.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on minority issues.[287] The report was entitled "Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" and addressed the human rights of persons belonging to national or ethnic, religious and linguistic minorities, where they found themselves in situations of humanitarian crises, such as conflict or disasters.

(*k*) Indigenous issues

a. Human Rights Council

The Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz, submitted her report to the Human Rights Council.[288] In the report, the Special Rapporteur provided a brief summary of her activities since her previous report and offered a thematic analysis of the impact of international investment agreements on the rights of indigenous peoples.

The United Nations High Commissioner for Human Rights also submitted a report to the Council on the rights of indigenous peoples.[289]

The Expert Mechanism on the Rights of Indigenous Peoples submitted a report to the Human Rights Council, covering the activities of the Expert Mechanism during its ninth session in Geneva from 11 to 15 July 2016.[290] The Expert Mechanism also submitted to the Council a study on the promotion and protection of the rights of indigenous peoples with respect to children and youth[291] and a summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples[292].

On 29 September 2016, the Human Rights Council adopted, without a vote, resolutions 33/12 entitled "Human rights and indigenous peoples: mandate of the Special Rapporteur on the rights of indigenous peoples" and resolution 33/13 entitled "Human rights and indigenous peoples". On 30 September 2016, the Council adopted resolution 33/25 entitled "Expert Mechanism on the Rights of Indigenous Peoples", without a vote.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on the rights of indigenous peoples.[293] In the report, the Special Rapporteur provided a brief summary of her activities since her previous report to the Assembly, as well as a thematic analysis of conservation measures and their impact on indigenous peoples' rights.

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[287] A/71/254.

[288] A/HRC/33/42.

[289] A/HRC/33/27.

[290] A/HRC/33/56.

[291] A/HRC/33/57.

[292] A/HRC/33/58.

[293] A/71/229.

On 19 December 2016, the General Assembly adopted resolution 71/178 entitled "Rights of indigenous peoples", on the recommendation of the Third Committee and without a vote.

(*l*) Terrorism and human rights

a. Human Rights Council

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, submitted his report to the Human Rights Council.[294] In the report, the Special Rapporteur listed key activities undertaken from June to December 2015 and focused on human rights in the context of preventing and countering violent extremism, following the Secretary-General's Plan of Action to Prevent Violent Extremism.[295]

The United Nations High Commissioner for Human Rights also submitted two reports to the Human Rights Council. The first report focused on the best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism.[296] The second report provided a summary of the panel discussion on the human rights dimensions of preventing and countering violent extremism held on 17 March 2016, during the thirty-first session of the Council.[297]

On 23 March 2016, the Human Rights Council adopted resolution 31/3 entitled "Protection of human rights and fundamental freedoms while countering terrorism: mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism", without a vote. On 24 March, the Human Rights Council adopted resolution 31/30 entitled "Effects of terrorism on the enjoyment of all human rights", by a recorded vote of 28 to 14, with 5 abstentions. On 30 September 2016, the Human Rights Council adopted resolution 33/21 entitled "Protection of human rights and fundamental freedoms while countering terrorism", by a recorded vote of 38 to 0, with 9 abstentions.

b. General Assembly

The Secretary-General submitted a report to the Assembly entitled "Promotion and protection of human rights and fundamental freedoms while countering terrorism".[298]

On 5 December 2016, upon the recommendation of the First Committee and without a vote, the General Assembly adopted resolution 71/38 entitled "Measures to prevent terrorists from acquiring weapons of mass destruction", and resolution 71/66 entitled "Preventing the acquisition by terrorists of radioactive sources". On 13 December 2016, upon the recommendation of the Sixth Committee, the General Assembly adopted resolution 71/151 entitled "Measures to eliminate international terrorism" without a vote.

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[294] A/HRC/31/65.

[295] A/70/674.

[296] A/HRC/33/29.

[297] A/HRC/33/28.

[298] A/71/384.

c. Security Council

On 22 September 2016, the Security Council adopted resolution 2309 (2016) on the matters of terrorism and civil aviation, which affirmed that all States have an interest to protect the safety of their own citizens and nationals against terrorist attacks conducted against international civil aviation, wherever these may occur, in accordance with international Law. On 12 December 2016, the Security Council adopted resolution 2322 (2016), by which it reiterated its call upon all states to become party to the international counter-terrorism conventions and protocols and reaffirmed that those responsible for committing or otherwise responsible for terrorist acts, and violations of international humanitarian law or violations or abuses of human rights in this context, must be held accountable.

(*m*) Persons with disabilities[299]

a. Human Rights Council

The Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, submitted two reports to the Human Rights Council. The first report described the activities carried out since March 2015 and provided a thematic study on the right of persons with disabilities to participate in decision-making.[300] The second report focused on the activities undertaken in 2016 and included a thematic study on access to support by persons with disabilities.[301]

On 23 March 2016 the Human Rights Council adopted resolution 31/6, entitled "The rights of persons with disabilities in situations of risk and humanitarian emergencies", without a vote. On 1 July 2016, the Human Rights Council adopted resolution 32/23, entitled "Protection of the family: role of the family in supporting the protection and promotion of human rights of persons with disabilities", by a recorded vote of 32 to 12, with 3 abstentions.

b. General Assembly

The Secretary-General submitted to the General Assembly a report entitled "Towards the full realization of an inclusive and accessible United Nations for persons with disabilities",[302] which covered accessibility issues as they related to human resources, the physical facilities on the United Nations premises, conference services and facilities, and information and documentation, and offered options for improving accessibility.

The Secretary-General transmitted the report of the Special Rapporteur on the rights of persons with disabilities,[303] which sought to provide guidance to States and other actors on how to establish disability-inclusive policies that are in conformity with the Convention on the Rights of Persons with Disabilities and which could contribute to the achievement of the Sustainable Development Goals.

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[299] See also the Report of the Secretary-General (E/CN.5/2017/4).

[300] A/HRC/31/62.

[301] A/HRC/34/58.

[302] A/71/344.

[303] A/71/314.

On 19 December 2016, upon the recommendation of the Third Committee, the General Assembly adopted resolution 71/165 entitled "Inclusive development for persons with disabilities" without a vote.

(*n*) Contemporary forms of slavery

a. Human Rights Council

The Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, presented her report to the Human Rights Council, which provided a thematic study on enforcing the accountability of States and businesses for preventing, mitigating and redressing contemporary forms of slavery in supply chains.[304]

On 29 September 2016, the Human Rights Council adopted resolution 33/1 entitled "Special Rapporteur on contemporary forms of slavery, including its causes and consequences", without a vote.

b. General Assembly

The Secretary-General submitted to the General Assembly a report on United Nations Voluntary Trust Fund on Contemporary Forms of Slavery,[305] which provided an overview of the work of the Trust Fund, in particular the recommendations for grants to beneficiary organizations that were adopted by the Board of Trustees of the Fund at its twentieth session, held in Geneva from 23 to 27 November 2015.

(*o*) Environment and human rights [306]

Human Rights Council

The Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and waste, Başkut Tuncak, submitted his report to the Human Rights Council.[307] In the report, the Special Rapporteur examined the impacts of toxics and pollution on children's rights, and the obligations of States and responsibilities of businesses in preventing exposure by children to such substances.

The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John Knox, submitted his report to the Human Rights Council.[308] The report described the increasing attention paid to the relationship between climate change and human rights in recent years, reviewed the effects of climate change on the full enjoyment of human rights and outlined the application of human rights obligations to climate-related actions.

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[304] A/HRC/33/46.

[305] A/71/272.

[306] For more information on the environment, see section 8 of this chapter.

[307] A/HRC/33/41.

[308] A/HRC/31/52.

On 23 March 2016, the Human Rights Council adopted resolution 31/8 entitled "Human rights and the environment", without a vote. On 1 July 2016, the Human Rights Council also adopted resolution 32/33 entitled "Human rights and climate change", without a vote.

(*p*) Business and human rights

a. Human Rights Council

The Working Group on the issue of human rights and transnational corporations and other business enterprises submitted its report to the Human Rights Council,[309] which focused on the duty of States to protect against human rights abuses involving State-owned enterprises.

The United Nations High Commissioner for Human Rights submitted a report to the Council entitled "Improving accountability and access to remedy for victims of business-related human rights abuse".[310]

The Secretary-General submitted the summary of discussions of the fourth annual Forum on Business and Human Rights, held in Geneva from 16 to 18 November 2015, to the Human Rights Council.[311]

On 30 June 2016, the Human Rights Council adopted resolution 32/10 entitled "Business and human rights: improving accountability and access to remedy", without a vote.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises,[312] which examined the human rights impacts of agro-industrial operations, especially with respect to the production of palm oil and sugarcane, on indigenous peoples and local communities.

(*q*) Promotion and protection of human rights

(i) *International promotion and protection*

a. Human Rights Council

The Independent Expert on human rights and international solidarity, Virginia Dandan, submitted her report to the Human Rights Council.[313] In the report, the Independent Expert presented a summary of the outcome of a series of mandated regional consultations on the proposed draft declaration on the right of peoples and individuals to international solidarity which was initially submitted to the Council in June 2014.

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[309] A/HRC/32/45.

[310] A/HRC/32/19.

[311] A/HRC/FBHR/2015/2 and A/HRC/32/46.

[312] A/71/291.

[313] A/HRC/32/43.

The United Nations High Commissioner for Human Rights submitted to the Council a report on the workshop on regional arrangements for the promotion and protection of human rights.[314]

The Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, submitted his report to the Council, which focused on the aggravation of the "regulatory chill" generated by investor-State dispute settlements, and demonstrated that the newly proposed investment court system suffered from the same fundamental flaws as investor-State dispute settlement.[315]

On 24 March 2016, the Human Rights Council adopted resolution 31/22 entitled "The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation", by a recorded vote of 32 to 0, with 15 abstentions. On 30 June 2016, the Human Rights Council adopted resolution 32/6 entitled "Enhancement of international cooperation in the field of human rights", without a vote, and resolution 32/9 entitled "Human rights and international solidarity", by a recorded vote of 33 to 13, with 1 abstention. On 1 July 2016, the Council adopted resolution 32/28 entitled "Declaration on the Right to Peace", by a recorded vote of 34 to 9, with 4 abstentions. On 29 September 2016, the Human Rights Council adopted resolution 33/3, entitled "Promotion of a democratic and equitable international order", by a recorded vote of 30 to 12, with 5 abstentions. On 30 September 2016, the Council adopted resolution 33/19 entitled "Human rights and transitional justice", by a recorded vote of 29 to 1, with 17 abstentions, and resolution 33/28 entitled "Enhancement of technical cooperation and capacity-building in the field of human rights", without a vote.

On 30 June 2016, the Human Rights Council adopted decision 32/115 entitled "Regional arrangements for the promotion and protection of human rights", without a vote.

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Independent Expert on human rights and international solidarity.[316] The report aimed at the amplification of the legal framework for international solidarity, while articulating the conceptualization and nature of such right. It took also into account both economic, social and cultural rights and civil and political rights in the consideration of the extraterritorial obligations of States and identified which non-State actors could play a role in the right to international solidarity.

The Secretary-General also transmitted to the General Assembly the report of the Independent Expert on the promotion of a democratic and equitable international order, which addressed the impacts of taxation on human rights and explores the challenges posed to the international order by widespread tax avoidance, tax evasion, tax fraud and profit shifting, facilitated by bank secrecy and a web of shell companies registered in tax havens. [317]

[314] A/HRC/34/23.

[315] A/HRC/33/40.

[316] A/71/280.

[317] A/71/286.

On 6 December 2016, the General Assembly adopted resolution 71/90 entitled "International cooperation in the peaceful uses of outer space", upon the recommendation of the Fourth Committee and without a vote. On 8 December 2016, without a reference to a Main Committee, the General Assembly adopted resolution 71/128 entitled "International cooperation on humanitarian assistance in the field of natural disasters, from relief to development", without a vote. On 19 December 2016, upon the recommendation of the Third Committee, the General Assembly adopted resolution 71/190 entitled "Promotion of a democratic and equitable international order", by a recorded vote of 130 to 53, with 6 abstentions; resolution 71/194 entitled "Enhancement of international cooperation in the field of human rights", without a vote; and resolution 71/211 entitled "International cooperation to address and counter the world drug problem", without a vote. On 21 December 2016, upon the recommendation of the Second Committee and without a vote, the General Assembly adopted resolution 71/213 entitled "Promotion of international cooperation to combat illicit financial flows in order to foster sustainable development" and resolution 71/242 entitled "Industrial development cooperation". On 22 December 2016, the General Assembly adopted resolutions 71/249, entitled "Promotion of interreligious and intercultural dialogue, understanding and cooperation for peace", without a reference to a Main Committee and without a vote.

(ii) *Ombudsman, mediator and other national human rights institutions*

a. Human Rights Council

The Secretary-General submitted to the Human Rights Council a report on national institutions for the promotion and protection of human rights.[318] The report contained information on the activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to establish and strengthen national human rights institutions; cooperation between those institutions and the international human rights system; and support provided by OHCHR to the Global Alliance of National Human Rights Institutions—the former International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights—and relevant regional networks.

On 29 September 2016, the Human Rights Council adopted resolution 33/15 entitled "National institutions for the promotion and protection of human rights", without a vote.

b. General Assembly

The Secretary-General submitted to the General Assembly a note referring to the report on national institutions for the promotion and protection of human rights submitted to the Human Rights Council.[319]

On 19 December 2016, upon the recommendation of the Third Committee, the General Assembly adopted resolution 71/200 entitled "The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights", without a vote.

[318] A/HRC/33/33.

[319] A/71/273.

(iii) *Right to promote and protect universally recognized human rights*

a. Human Rights Council

The Special Rapporteur on the situation of human rights defenders, Michel Forst, submitted his annual report to the Human Rights Council.[320] In his report, the Special Rapporteur conceptualized good practices in the protection of human rights defenders at the local, national, regional and international levels.

On 24 March 2016, the Human Rights Council adopted resolution 31/32 entitled "Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights", by a recorded vote of 33 to 6, with 8 abstentions. On 1 July 2016, the Council adopted resolution 32/13 entitled "The promotion, protection and enjoyment of human rights on the Internet", without a vote. On 29 September 2016, the Council adopted resolution 33/6 entitled "The role of prevention in the promotion and protection of human rights", without a vote.

b. General Assembly

The Secretary-General transmitted to the General Assembly a report of the Special Rapporteur.[321] The report highlighted the situation of environmental human rights defenders, raised alarm about the increasing and intensifying violence against them, and made recommendations to various stakeholders in order to reverse this trend and to empower and protect those defenders, for the sake of the common environment and sustainable development.

(*r*) Miscellaneous

(i) *Human rights and good governance*

The Special Rapporteur on the independence of judges and lawyers, Monica Pinto, submitted her first annual report[322] to the Human Rights Council, in which the Special Rapporteur analyzed the work done by her predecessors and established an initial set of indicators of independence and impartiality which could be used by State institutions, judges, prosecutors, lawyers, civil society actors, donors and cooperation agencies, among others, to assess the independence and impartiality of specific justice systems, to identify needs for reform, and to allow targeted measures and actions to be taken to improve the administration of justice and the justice system in a more effective way.

On 23 March 2016, the Human Rights Council adopted resolution 31/2 entitled "Integrity of the judicial system" and resolution 31/14 entitled "The role of good governance in the promotion and protection of human rights", without a vote. On 29 September 2016, the Human Rights Council adopted resolution 33/8 entitled "Local government and human rights", without a vote.

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[320] A/HRC/31/55.

[321] A/71/281.

[322] A/HRC/32/34.

(ii) *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, Juan Pablo Bohoslavsky, submitted two reports to the Human Rights Council. The first was the thematic report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights focused on illicit financial flows, human rights.[323] On such report, the Independent Expert explored the interrelationships between income and wealth inequality, on the one hand, and financial crises, on the other, and their implications for the enjoyment of human rights. The second was the final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States.[324]

On 16 April 2016, the High Commissioner for Human Rights submitted a report to the Human Rights Council presenting a compilation of best practices to counter the negative impact of corruption on the enjoyment of all human rights developed by States, national human rights institutions, national anti-corruption authorities, civil society and academia.[325]

On 23 March 2016, the Human Rights Council adopted resolution 31/11 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 33 to 12, with 2 abstentions. On 24 March 2016, the Human Rights Council also adopted resolution 31/22 entitled "The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation", by a recorded vote of 32 to 0, with 15 abstentions.

b. General Assembly

The Secretary-General submitted a report on external debt sustainability and development to the General Assembly pursuant to General Assembly resolution 70/190,[326] which analyzed the evolution of external debt sustainability in developing and transition economies since the start of the millennium.

On 21 December 2016, upon the recommendation of the Second Committee, the General Assembly adopted resolution 71/216 entitled "External debt sustainability and development", without a vote.

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[323] A/HRC/31/60.

[324] A/HRC/31/61.

[325] A/HRC/32/22.

[326] A/71/276.

(iii) *Unilateral coercive measures*

a. Human Rights Council

The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, submitted his report to the Human Rights Council, in which he described the activities undertaken between July 2015 and June 2016 and the issues relating to remedies and redress for victims of unilateral coercive measures.[327]

b. General Assembly

The Secretary-General transmitted to the General Assembly the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights.[328] In the report, which focused on issues of remedies and redress for victims of unilateral coercive measures, the Special Rapporteur set out a preliminary review of the conceptual aspects of remedies for violations of human rights caused by unilateral coercive measures in general international law, in international human rights law and in international humanitarian law.

On 19 December 2016, upon the recommendation of the Third Committee, the General Assembly adopted resolution 71/193 entitled "Human rights and unilateral coercive measures", by a recorded vote of 133 to 54, without abstentions.

(iv) *Human rights of older persons*

The Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, submitted her report to the Council, which assessed the implementation of existing international instruments with regard to older persons while identifying the best practices and gaps in the implementation of existing laws related to the promotion and protection of the rights of older persons. [329]

On 29 September 2016, the Human Rights Council adopted resolution 33/5 entitled "The human rights of older persons", without a vote.

(v) *Other issues*

On 8 April 2016, the Human Rights Council adopted resolution 31/23 entitled "Promoting human rights through sport and the Olympic ideal", without a vote. On 30 June 2016, the Council adopted resolution 32/5 entitled "Human rights and arbitrary deprivation of nationality", without a vote. On 1 July 2016, the Council adopted resolution 32/12 entitled "Impact of arms transfers on human rights", by a recorded vote of 32 to 5, with 10 abstentions, resolution 32/21 entitled "Elimination of female genital mutilation", without a vote, and resolution 32/31 entitled "Civil society space", by a recorded vote of 31 to 7, with 9 abstentions.

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[327] A/HRC/33/48.

[328] A/71/287.

[329] A/HRC/33/44.

6. Women[330]

(*a*) United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women)

UN-Women was established by the General Assembly pursuant to resolution 64/289 of 2 July 2010 as a composite entity 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.[331] The Executive Board of UN-Women held four meeting sessions in New York in 2016,[332] during which it adopted four decisions: decision 2016/1, entitled "Report of the Under-Secretary-General/Executive Director of the United Nations Entity for Gender Equality and the Empowerment of Women on progress made on the strategic plan, 2014–2017, including the midterm review of the strategic plan"; decision 2016/2, entitled "Report on the evaluation function of the United Nations Entity for Gender Equality and the Empowerment of Women, 2015"; decision 2016/3, entitled "Report on internal audit and investigation activities for the period from 1 January to 31 December 2015", and decision 2016/4, entitled "Report on Structured Dialogue on Financing: UN-Women's funding overview, gaps and financing strategy".

(*b*) 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) 21 June 1946 as a functional commission to deal with questions relating to gender equality and the advancement of women. It is the principal global policy-making body in this field and prepares recommendations for and reports to the Economic and Social Council on the promotion of women's rights in political, economic, civil, social and educational fields.

The Commission held its sixtieth session in New York from 14 to 24 March 2016.[333] In accordance with Economic and Social Council resolution 2013/18, the priority theme of the Commission was "Women's empowerment and the link to sustainable development". It also considered as its review theme "The elimination and prevention of all forms

[330] This section covers the Security Council, the General Assembly, the Economic and Social Council, and the Commission on the Status of Women and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women). For more detailed information and documents regarding this topic generally, see the website of UN-Women at https://www.unwomen.org. For information regarding women and human rights, see Chapter III section A.5(*a*)(vi) and section A.5(*c*) iv).

[331] It 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.

[332] See the reports of the Executive Board of UN-Women: Report on the election of the Bureau and on the first regular session, 11 January and 9 February 2016 (UNW/2016/3); Report on the annual session of 2016, 27 and 28 June 2016 (UNW/2016/7); Report on the second regular session of 2016, 1 to 2 September 2016 (UNW/2016/10) and the Report of the joint meeting of the Executive Boards of UNDP/UNFPA/UNOPS, UNICEF, UN-Women and WFP, 3 June 2016.

[333] For report of the Commission on the Status of Women on its sixtieth session, see *Official Records of the Economic and Social Council, 2016, Supplement No.7* (E/2016/27–E/CN.6/2016/22).

of violence against women and girls", evaluating progress in the implementation of the agreed conclusions from its fifty-seventh session.

During its sixtieth session, the Commission adopted two resolutions: resolution 60/1 entitled "Release of women and children taken hostage, including those subsequently imprisoned, in armed conflicts" and resolution 60/2 entitled "Women, the girl child and HIV and AIDS".

(*c*) Economic and Social Council

On 2 June 2016, the Economic and Social Council adopted resolution 2016/2 entitled "Mainstreaming a gender perspective into all policies and programmes in the United Nations system", resolution 2016/3 entitled "Multi-year programme of work of the Commission on the Status of Women", and resolution 2016/4 entitled "Situation of and assistance to Palestinian women".

On the same day, the Council also adopted decision 2016/224 entitled "Report of the Commission on the Status of Women on its sixtieth session and provisional agenda and documentation for the sixtieth-first session".

(*d*) General Assembly

On 19 December 2016, the General Assembly adopted, on the recommendation of the Third Committee and without a vote, resolution 71/167 entitled "Trafficking in women and girls" and resolution 71/170 entitled "Intensification of efforts to prevent and eliminate all forms of violence against women and girls: domestic violence".

(*e*) Security Council

On 15 June 2016, the President of the Security Council issued a statement in connection with the Council's consideration of the item "Women and peace and security".[334]

7. Humanitarian matters

(*a*) Economic and Social Council

On 29 June 2016, the Economic and Social Council adopted resolution 2016/9 entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations", without a vote.

(*b*) General Assembly

On 6 December 2016, the General Assembly, upon the recommendation of the Fourth Committee, adopted resolution 71/96 entitled "Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the

[334] S/PRST/2016/9.

Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories", by a recorded vote of 168 to 6, with 6 abstentions.

On 8 December 2016, the General Assembly, without reference to a Main Committee and without a vote, adopted resolution 71/126 entitled "Assistance to the Palestinian people", resolution 71/127 entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations", resolution 71/128 entitled "International cooperation on humanitarian assistance in the field of natural disasters, from relief to development", and resolution 71/129 entitled "Safety and security of humanitarian personnel and protection of United Nations personnel".

8. Environment

(*a*) United Nations Climate Change Conference in Marrakech

The United Nations Climate Change Conference was held in Bab Ighli, Marrakech, Morocco, from 7 to 18 November 2016. The twenty-second session of the Conference of States Parties to the United Nations Framework Convention on Climate Change (COP22), 1992,[335] the twelfth session of the Conference of the Parties serving as the meeting of Parties to the Kyoto Protocol (CMP12), 1997,[336] and the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA 1) were held during the Conference.[337]

The Conference of States Parties to the United Nations Framework Convention on Climate Change adopted 25 decisions and one resolution.[338] The Conference of the Parties serving as the meeting of Parties to the Kyoto Protocol adopted eight decisions and one resolution.[339]

(*b*) Economic and Social Council

In 2016, the first High-level Political Forum on Sustainable Development was held since the adoption of the Agenda for Sustainable Development and the Sustainable Development Goals (SDGs) during United Nations Sustainable Development Summit on 25 September 2015. The Forum is the United Nations' central platform for the follow-up and review of the 2030 Agenda for Sustainable Development and the SDGs. The Forum, which adopted a Ministerial Declaration, was expected to provide political leadership, guidance and recommendations on the 2030 Agenda's implementation and follow-up; keep track of progress of the SDGs; spur coherent policies informed by evidence, science and country experiences; as well as address new and emerging issues. The 2016 session of the Forum included voluntary reviews of 22 countries and thematic reviews of progress on the SDGs, including cross-cutting issues, supported by reviews by the functional commissions of the Economic and Social Council and other inter-governmental bodies and forums. The

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[335] United Nations, *Treaty Series,* vol. 1771, p. 107.

[336] *Ibid*., vol. 2303, p. 107.

[337] For the list of decisions and resolutions, see the report of the Conference (FCCC/KP/CMP/2016/8 and Add.1 and 2).

[338] For the report of the Conference of the Parties, see FCCC/CP/2016/10 and Add. 1 and Add.2.

[339] For the report of the Conference of the Parties, see FCCC/KP/CMP/2016/8 and Add.1.

Forum also included a range of side events, a Partnership Exchange special event, an SDGs Business Forum, and SDGs Learning, Training and Practice sessions. [340]

On 25 July 2016, the Council adopted resolution 2016/10 entitled "Economic and Social Commission for Western Asia strategy and plan of action on the 2030 Agenda for Sustainable Development", without vote, and resolution 2016/11 entitled "Committing to the effective implementation of the 2030 Agenda for Sustainable Development in Asia and the Pacific", without a vote. On 27 July 2016, the Council adopted resolution 2016/24 entitled "Human Settlements", without a vote.

(*c*) General Assembly

During the seventieth session, on 29 July 2016, the Assembly adopted resolution 70/299 entitled "Follow-up and review of the 2030 Agenda for Sustainable Development at the global level" (2015–2016), without reference to a Main Committee and without a vote. On 9 September 2016, the Assembly adopted resolution 70/301 entitled "Tackling illicit trafficking in wildlife" and resolution 70/303 entitled "Modalities for the United Nations Conference to Support the Implementation of Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development", without reference to a Main Committee and without a vote.

During the seventy-first session, on 21 December 2016, the Assembly, upon the recommendation of the Second Committee and without a vote, the following resolutions: resolution 71/219 entitled "Combating sand and dust storms"; resolution 71/220 entitled "Cooperative measures to assess and increase awareness of environmental effects related to waste originating from chemical munitions dumped at sea"; resolution 71/222 entitled "International Decade for Action "Water for Sustainable Development" 2018–2028"; resolution 71/224 entitled "Towards the sustainable development of the Caribbean Sea for present and future generations"; resolution 71/225 entitled "Follow-up to and implementation of the SIDS Accelerated Modalities of Action (SAMOA) Pathway and the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States"; resolution 71/226 entitled "Disaster risk reduction"; resolution 71/227 entitled "Effective global response to address the impacts of the El Niño phenomenon"; resolution 71/228 entitled "Protection of global climate for present and future generations of humankind"; resolution 71/229 entitled "Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa"; resolution 71/230 entitled "Implementation of the Convention on Biological Diversity and its contribution to sustainable development"; resolution 71/231 entitled "Report of the United Nations Environment Assembly of the United Nations Environment Programme"; resolution 71/232 entitled "Harmony with Nature"; resolution 71/233 entitled "Ensuring access to affordable, reliable, sustainable and modern energy for all"; resolution 71/234 entitled "Sustainable mountain development"; resolution 71/235 entitled "Implementation of the outcome of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) and strengthening of the United Nations Human Settlements

[340] High-level Political Forum on Sustainable Development 2016—Ensuring that no one is left behind, Sustainable Development Goals Knowledge Platform, https://sustainabledevelopment.un.org/hlpf/2016.

Programme (UN Habitat)"; and resolution 71/240 entitled "Promotion of sustainable tourism, including ecotourism, for poverty eradication and environment protection".

On the same day, the Assembly, upon the recommendation of the Second Committee, also adopted the following resolutions: resolution 71/218 entitled "Oil slick on Lebanese shores", by a recorded vote of 166 to 8, with 7 abstentions; resolution 71/221 entitled "Entrepreneurship for sustainable development", by a recorded vote of 147 to 26, with 7 abstentions; and resolution 71/223 entitled "Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development and of the United Nations Conference on Sustainable Development", by a recorded vote of 134 to 44, with 7 abstentions.

9. Law of the Sea

(*a*) Reports of the Secretary-General

Pursuant to paragraph 324 of General Assembly resolution 70/235 of 23 December 2015, the Secretary-General submitted a comprehensive report on oceans and the law of the sea[341] to the General Assembly at its seventy-first session under the agenda item entitled "Oceans and the law of the sea".

The first part of the report[342] was prepared to facilitate discussions on the topic of focus of the seventeenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Informal Consultative Process), namely "Marine debris, plastics and microplastics". The report provided an overview of the sources and pathways of marine debris, including plastics and microplastics; their environmental, economic and social impacts. It also addressed action, including legislative action, undertaken at the global, regional and national levels to prevent and significantly reduce marine debris, including plastics and microplastics; as well as further action necessary to prevent and significantly reduce marine debris, including plastics and microplastics.

The second part of the report[343] provided information on the status of the United Nations Convention on the Law of the Sea[344] (the "Convention") and its implementing agreements and the work of the bodies established under the Convention, namely the International Seabed Authority (ISA),[345] the International Tribunal for the Law of the Sea (ITLOS),[346] and the Commission on the Limits of the Continental Shelf (CLCS).[347]

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[341] A/71/74 and A/71/74/Add.1.

[342] A/71/74.

[343] A/71/74/Add.1.

[344] United Nations, *Treaty Series*, vol. 1833, p. 3.

[345] A/71/74/Add.1, II(A) (paras. 7, 8 and 1), VII(E) (paras. 83 and 97) and X (para. 137). See also SPLOS/303/Chapters IV(A) (para. 25) and V and VIII (para. 92).

[346] A/71/74/Add.1, II(A) (paras. 9, 13 and 14) and II (B) (para. 17). See also SPLOS/303/Chapters IV (A and B). VIII (paras. 92 and 107) and IX (paras. 116, 125 and 126). For more information about the work of the Tribunal in 2016, see the annual report of the International Tribunal for the Law of the Sea for 2016 (SPLOS/304) and chap. VII., part B of this publication.

[347] A/71/74/Add.1, Chapter II(A) (paras. 10–12, 13 and 15). See also SPLOS/303/Chapters VI (A and B), VII, VIII (para. 92) and IX (paras. 121, 125 and 127). For more information on the fortieth

It also provided an overview of the work of the Organization, its specialized agencies and other institutions in the field of ocean affairs and the law of the sea, and addressed issues in relation to peaceful settlement of disputes,[348] maritime spaces,[349] developments relating to international shipping activities,[350] people at sea,[351] maritime security,[352] sustainable development of oceans and seas,[353] oceans and climate change and ocean acidification,[354] building the capacity of States to implement the legal regime for the oceans and seas,[355] and strengthening international cooperation and coordination.[356]

(*b*) Consideration by the General Assembly

(i) *Oceans and law of the sea*

The General Assembly considered the agenda item entitled "Oceans and the law of the sea" on 7 and 23 December 2016, having before it the following documents: the report of the Secretary-General,[357] the reports 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 Socioeconomic Aspects (the Regular Process),[358] and of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (the Informal Consultative Process) at its seventeenth meeting,[359] and on the resumed twenty-fifth and the twenty-sixth Meetings of States Parties to the Convention.[360]

On 23 December 2016, the General Assembly, without reference to a Main Committee, adopted resolution 71/257 entitled "Oceans and the law of the sea", by a recorded vote of 158 to 2, with 2 abstentions.

(ii) *Sustainable fisheries*

On 7 December 2016, the General Assembly also considered the agenda item entitled "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

(1 February–18 March 2016), forty-first (11 July–26 August 2016), and forty-second (17 October–2 December 2016) sessions of the CLCS, see CLCS/93, CLCS/95 and CLCS/96, respectively.

[348] A/71/74/Add.1, Chapter II.

[349] *Ibid*., Chapter III.

[350] *Ibid*., Chapter IV.

[351] *Ibid*., Chapter V.

[352] *Ibid*., Chapter VI.

[353] *Ibid*., Chapter VII.

[354] *Ibid*., Chapter VIII.

[355] *Ibid*., Chapter IX.

[356] *Ibid*., Chapter X.

[357] A/71/74 and Add.1.

[358] A/71/362.

[359] A/71/204.

[360] SPLOS/293 and SPLOS/303.

on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments".

On the same day, the General Assembly, without reference to a Main Committee, adopted resolution 71/123 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.

By its resolution 70/75, the General Assembly requested the Secretary-General to resume the Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks again, which was held from 23 to 27 May 2016.[361] The Review Conference was mandated to assess the effectiveness of the Agreement in securing the conservation and management of straddling and highly migratory fish stocks by reviewing and assessing the adequacy of its provisions and, if necessary, proposing means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of those stocks. The Conference reaffirmed the importance of meeting the Sustainable Development Goals and targets set out in the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, and its commitment to conserve and sustainably use the oceans, seas and marine resources for sustainable development. It further reaffirmed the importance of the Paris Agreement, the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want", and the small island developing States (SIDS) Accelerated Modalities of Action (SAMOA) Pathway (Samoa Pathway).

(iii) *Preparatory Committee established by General Assembly resolution 69/292*

The first and second sessions of the Preparatory Committee established by General Assembly resolution 69/292: Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction took place from 28 March to 8 April 2016 and 26 August to 9 September 2016, respectively, at the United Nations Headquarters in New York. These sessions considered issues relating to marine genetic resources, including questions on the sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; and capacity-building and the transfer of marine technology. The Preparatory Committee also dealt with a number of cross-cutting issues relating to the scope of an instrument, its relationship with UNCLOS and other instruments, guiding approaches and principles, institutional arrangements, dispute settlement and responsibility and liability.

[361] See the Report of the resumed Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (A/CONF.210/2016/5). See also the Report of the Secretary-General on the topic (A/CONF.210/2016/1).

(*c*) Consideration by the Meeting of States Parties to the United Nations Convention on the Law of the Sea

The resumed twenty-fifth Meeting of States Parties to the United Nations Convention on the Law of the Sea, held on 15 January 2016, elected Antonio Cachapuz de Medeiros (Brazil) as a member of the International Tribunal for the Law of the Sea.[362]

The twenty-sixth Meeting of States Parties was held at United Nations Headquarters from 20 to 24 June 2016.[363] It took note of reports presented by the International Tribunal for the Law of the Sea as well as of the information related to the activities of the International Seabed Authority and the Commission on the Limits of the Continental Shelf (CLCS), and approved the budget of the Tribunal for the biennium 2017–2018. Owing to a lack of nominations, neither the resumed twenty-fifth Meeting nor the twenty-sixth Meeting was in a position to fill the vacancy that had arisen in the CLCS.

The Meeting also considered the report submitted by the Secretary-General under article 319 of the Convention.[364] In their deliberation under the agenda item entitled "Report of the Secretary-General under article 319 for the information of States parties on issues of a general nature, relevant to States parties, which have arisen with respect to the United Nations Convention on the Law of the Sea", States Parties addressed, *inter alia*, the importance of the oceans and the effective implementation of the Convention, including for the sustainable development of oceans and seas and their resources, in particular in the context of the 2030 Agenda for Sustainable Development, the need for capacity-building and cross-sectoral cooperation and coordination, the work of the International Seabed Authority on the development of a regulatory framework for the exploitation of mineral resources in the Area, the General Assembly resolution on the development of an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, international migration by sea, and the situations in Crimea and in the South China Sea.[365]

10. Crime prevention and criminal justice[366]

(*a*) Conference of the Parties to the United Nations Convention against Transnational Organized Crime

The eighth session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime was held in Vienna from 17 to 21 October 2016.[367] The Conference adopted four resolutions and two decisions.

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[362] See SPLOS/293, paras. 10–13.

[363] See SPLOS/303.

[364] See the Report of the Secretary-General (A/71/74 and A/71/74/Add.1).

[365] See SPLOS/303.

[366] For more detailed information and documents regarding this topic generally, see the website of the United Nations Office on Drugs and Crimes at https://www.unodc.org.

[367] For the report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its eighth session, see CTOC/COP/2016/15.

(*b*) Commission on Crime Prevention and Criminal Justice (CCPJ)

The Commission on Crime Prevention and Criminal Justice was established by the Economic and Social Council in its resolution 1992/1 of 6 February 1992 as a functional commission to deal with a broad scope of policy matters in this field, including combating national and transnational crime, covering organized crime, economic crime and money laundering; promoting the role of criminal law in environmental protection, crime prevention in urban areas, including juvenile crime and violence; and improving the efficiency and fairness of criminal justice administration systems. Aspects of these principal themes are selected for discussion at each of its annual sessions. The Commission also provides substantive and organizational direction for the quinquennial United Nations Congress on Crime Prevention and Criminal Justice.

The Commission held its regular and reconvened twenty-fifth session from 23 to 27 May 2016 and 1 to 2 December 2016,[368] respectively. The main theme for the twenty-fifth session of the Commission was "Criminal justice responses to prevent and counter terrorism in all its forms and manifestations, including the financing of terrorism, and technical assistance in support of the implementation of relevant international conventions and protocols".

(*c*) Economic and Social Council

On 26 July 2016, the Economic and Social Council, upon recommendation of the Commission on Crime Prevention and Criminal Justice, adopted the following resolutions and decisions: resolution 2016/16 entitled "Follow-up to the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice and preparations for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice", recommending its adoption by the General Assembly; resolution 2016/17 entitled "Restorative justice in criminal matters"; resolution 2016/18 entitled "Mainstreaming holistic approaches in youth crime prevention"; decision 2016/241 entitled "Organization of the thematic discussions at future sessions of the Commission on Crime Prevention and Criminal Justice"; and decision 2016/243 entitled "Report of the Commission on Crime Prevention and Criminal Justice on its twenty-fifth session and provisional agenda for its twenty-sixth session".

(*d*) General Assembly

On 19 December 2016, the General Assembly adopted, on the recommendation of the Third Committee and without a vote, four resolutions under the agenda item 106 entitled "Crime prevention", namely resolution 71/206 entitled "Follow-up to the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice and preparations for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice"; resolution 71/ 207 entitled "United Nations African Institute for the Prevention of Crime and the Treatment of Offenders"; resolution 71/208 entitled "Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance

[368] See *Official Records of the Economic and Social Council, 2016, Supplement No. 10* and *ibid.*, *Supplement No. 10A (*E/2016/30 and Add.1).

with the United Nations Convention against Corruption"; and resolution 71/209 entitled "Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity".

11. International drug control

(*a*) Commission on Narcotic Drugs

The Commission on Narcotic Drugs (CND) 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.

The regular and reconvened fifty-ninth session of the Commission was held in Vienna from 14 to 22 March and from 30 November to 2 December 2016.[369] The Commission adopted two draft resolution to be recommended by the Economic and Social Council for adoption by the General Assembly at its special session on the world drug problem and at its regular session. It also recommended three draft decisions for adoption by the Economic and Social Council. It further brought another eight resolutions and seven decisions to the attention of the Economic and Social Council, the text of which is available in the report of the Commission.

(*b*) Economic and Social Council

On 26 July 2016, the Economic and Social Council adopted resolution 2016/19 entitled "Promoting the implementation of the United Nations Guiding Principles on Alternative Development", on the recommendation of the Commission on Narcotic Drugs.

(*c*) General Assembly

The thirtieth special session of the General Assembly was held at the United Nations Headquarters in New York from 19 to 21 April 2016 to review the progress in the implementation of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, including an assessment of the achievements and challenges in countering the world drug problem, within the framework of the three international drug control conventions and other relevant United Nations instruments. On 19 April 2016, the Assembly adopted, without reference to a Main Committee, resolution S-30/1 entitled "Our joint commitment to effectively addressing and countering the world drug problem".

On 19 December 2016, the General Assembly adopted, on the recommendation of the Third Committee and without a vote, resolution 71/210 entitled "Promoting the implementation

[369] For the report of the fifty-ninth session of the Commission on Narcotic Drugs, see *Official records of the Economic and Social Council 2016, Supplement No. 8 and Supplement No. 8A* (E/2016/28–E/CN.7/2016/16 and Add. 1).

of the United Nations Guiding Principles on Alternative Development" and resolution 71/211 entitled "International cooperation to address and counter the world drug problem".

12. Refugees and displaced persons

(*a*) Executive Committee of the Programme of the United Nations High Commissioner for Refugees[370]

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-sixth plenary session of the Executive Committee was held in Geneva from 3 to 7 October 2016.[371]

(*b*) General Assembly

On 7 June 2016, the General Assembly adopted, without reference to a Main Committee, resolution 70/265 entitled "Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia", by a recorded vote of 76 to 15, with 64 abstentions.

On 30 June 2016, the General Assembly adopted, without reference to a Main Committee and without a vote, resolution 70/290 entitled "High-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants".

On 19 September 2016, the General Assembly adopted, without reference to a Main Committee and without a vote, resolution 71/1 entitled "New York Declaration for Refugees and Migrants".

On 6 December 2016, the Assembly adopted, on the recommendation of the Fourth Committee, resolution 71/91 entitled "Assistance to Palestine refugees", by a recorded vote of 167 to 1, with 9 abstentions; resolution 71/92 entitled "Persons displaced as a result of the June 1967 and subsequent hostilities", by a recorded vote of 166 to 6, with 6 abstentions; resolution 71/93 entitled "Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East", by a recorded vote of 167 to 6, with 5 abstentions; and resolution 71/94, entitled "Palestine refugees' properties and their revenues", by a recorded vote of 165 to 7, with 5 abstentions.

On 19 December 2016, the General Assembly adopted, on the recommendation of the Third Committee and without a vote, resolution 71/171 entitled "Enlargement of the Executive

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[370] For detailed information and documents regarding this topic generally, see the website of the UNHCR at https://www.unhcr.org.

[371] For the report of the United Nations High Commissioner for Refugees on the activities of his Office, see *Official Records of the General Assembly, Seventieth-first Session, Supplement No. 12* (A/71/12). For the report of the sixty-seventh session of the Executive Committee of the High Commissioner's Programme, see *Official Records of the General Assembly, Seventieth-first Session*, *Supplement No. 12A* (A/71/12/Add.1).

Committee of the Programme of the United Nations High Commissioner for Refugees", resolution 71/172 entitled "Office of the United Nations High Commissioner for Refugees", and 71/173 entitled "Assistance to refugees, returnees and displaced persons in Africa".

13. International Court of Justice[372]

(*a*) Organization of the Court

At the end of 2016, the composition of the Court was as follows:

President: Ronny Abraham (France);

Vice-President: Abdulqawi Ahmed Yusuf (Somalia);

Judges: Hisashi Owada (Japan), Peter Tomka (Slovakia), Mohamed Bennouna (Morocco), Antônio Augusto Cançado Trindade (Brazil), Christopher Greenwood (United Kingdom), Xue Hanqin (China), Joan E. Donoghue (United States of America), Giorgio Gaja (Italy), Julia Sebutinde (Uganda), Dalveer Bhandari (India), Patrick Lipton Robinson (Jamaica), James Richard Crawford (Australia) and Kirill Gevorgian (Russian Federation).

The Registrar of the Court was Philippe Couvreur (Belgium); the Deputy-Registrar was Jean-Pelé Fomété (Cameroon).

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: Ronny Abraham;

Vice-President: Abdulqawi Ahmed Yusuf;

Judges: Xue Hanqin, Joan E. Donoghue, and Giorgio Gaja.

Substitute members:

Judges: Antônio Augusto Cançado Trindade and Kirill Gevorgian.

(*b*) Jurisdiction of the Court[373]

As of 31 December 2016, 72 States had recognized the compulsory jurisdiction of the Court, as contemplated by Article 36, paragraph 2, of the Statute. No new declarations recognizing compulsory jurisdiction were made in 2016.

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[372] 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, Seventieth-first Session, Supplement No. 4* (A/71/4) (for the period 1 August 2015 to 31 July 2016) and *ibid.*, *Seventy-second Session, Supplement No. 4* (A/72/4) (for the period 1 August 2016 to 31 July 2017). See also the website of the Court at https://www.icj-cij.org.

[373] 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 https://treaties.un.org/Pages/ParticipationStatus.aspx.

(*c*) General Assembly

On 27 October 2016, the General Assembly adopted, without reference to a Main Committee, decision 71/509 in which it took note of the report of the International Court of Justice for the period from 1 August 2015 to 31 July 2016.

On 5 December 2016, the Assembly adopted, on the recommendation of the First Committee, resolution 71/58 entitled "Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons", by a recorded vote of 136 to 2, with 22 abstentions.

On 13 December 2016, the Assembly adopted, on the recommendation of the Sixth Committee and without a vote, resolution 71/147 entitled "Commemoration of the seventieth anniversary of the International Court of Justice".

14. International Law Commission[374]

(*a*) Membership of the Commission[375]

The membership of the International Law Commission at its sixty-eighth session consisted of Mohammed Bello Adoke (Nigeria), Ali Mohsen Fetais Al-Marri (Qatar), Lucius Caflisch (Switzerland), Enrique J. A. Candioti (Argentina), Pedro Comissário Afonso (Mozambique), Abdelrazeg El-Murtadi Suleiman Gouider (Libya), Concepción Escobar Hernández (Spain), Mathias Forteau (France), Juan Manuel Gómez-Robledo (Mexico), Hussein A. Hassouna (Egypt), Mahmoud D. Hmoud (Jordan), Huikang Huang (China), Marie G. Jacobsson (Sweden), Maurice Kamto (Cameroon), Kriangsak Kittichaisaree (Thailand), Roman A. Kolodkin (Russian Federation),[376] Ahmed Laraba (Algeria), Donald M. McRae (Canada), Shinya Murase (Japan), Sean D. Murphy (United States of America), Bernd H. Niehaus (Costa Rica), Georg Nolte (Germany), Ki Gab Park (Republic of Korea), Chris Maina Peter (United Republic of Tanzania), Ernest Petrič (Slovenia), Gilberto Vergne Saboia (Brazil), Narinder Singh (India), Mr. Pavel Šturma (Czech Republic), Dire D. Tladi (South Africa), Eduardo Valencia-Ospina (Colombia), Marcelo Vázquez-Bermúdez (Ecuador),[377] Amos S. Wako (Kenya), Nugroho Wisnumurti (Indonesia) and Michael Wood (United Kingdom).

(*b*) Sixty-eighth session of the International Law Commission

The International Law Commission held the first part of its sixty-eighth session from 2 May to 10 June 2016, and the second part of the session from 4 July to 12 August 2016, at its

[374] Detailed information and documents relating to the work of the International Law Commission may be found on the Commission's website at https://legal.un.org/ilc/.

[375] Pursuant to article 10 of the Statute of the International Law Commission, 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.

[376] On 8 May 2015 the Commission elected Roman A Kolodkin to fill the casual vacancy occasioned by the resignation of Kirill Gevorgian (Russian Federation).

[377] On 6 May 2013, the Commission elected Marcelo Vázquez-Bermúdez to fill the casual vacancy occasioned by the resignation of Stephen C. Vasciannie (Jamaica) in 2012.

seat at the United Nations Office at Geneva.[378] The Commission continued its consideration of the following topics: "Protection of persons in the event of disasters", "Immunity of State officials from foreign criminal jurisdiction", "Subsequent agreements and subsequent practice in relation to the interpretation of treaties", "Provisional application of treaties", "Identification of customary international law", "Protection of the environment in relation to armed conflicts", "Protection of the atmosphere", "Crimes against humanity", and "*Jus cogens*".

In relation to the topic "Protection of persons in the event of disasters", the Commission had before it the eighth report of the Special Rapporteur,[379] as well as comments and observations received from Governments and international organizations on the draft articles adopted on first reading.[380] The Commission subsequently adopted, on second reading, a draft preamble and 18 draft articles, together with commentaries thereto, and in accordance with article 23 of its statute recommended to the General Assembly the elaboration of a convention on the basis of the draft articles.[381]

As regards the topic "Identification of customary international law", the Commission had before it the fourth report of the Special Rapporteur[382] and the memorandum by the Secretariat concerning the role of decisions of national courts in the case law of international courts and tribunals of a universal character for the purpose of the determination of customary international law.[383] The Commission adopted on first reading a set of 16 draft conclusions, together with commentaries thereto, and decided, in accordance with articles 16 to 21 of its Statute, to transmit the draft conclusions, through the Secretary-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 2018 (chap. V).[384]

As regards the topic "Subsequent agreements and subsequent practice in relation to the interpretation of treaties", the Commission had before it the fourth report of the Special Rapporteur.[385] The Commission adopted on first reading a set of 13 draft conclusions, together with commentaries thereto, on subsequent agreements and subsequent practice in relation to the interpretation of treaties. The Commission decided, in accordance with articles 16 to 21 of its Statute, to transmit the draft conclusions, through the Secretary-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 2018.[386]

With respect to the topic "Crimes against humanity", the Commission had before it the second report of the Special Rapporteur,[387] as well as the memorandum by the Secretariat providing information on existing treaty-based monitoring mechanisms which

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[378] For the report of the International Law Commission on the work at its sixty-eighth session, see *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10).

[379] A/CN.4/697.

[380] A/CN.4/696 and Add. 1.

[381] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), chap. IV.

[382] A/CN.4/695 and Add.1.

[383] A/CN.4/691.

[384] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), chap. V.

[385] A/CN.4/694.

[386] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), chap. VI.

[387] A/CN.4/690.

may be of relevance to the future work of the International Law Commission.[388] Following the debate in Plenary, the Commission decided to refer the draft articles proposed by the Special Rapporteur to the Drafting Committee. Upon consideration of the report of the Drafting Committee,[389] the Commission provisionally adopted draft articles 5 to 10, together with commentaries thereto. The Commission also decided to refer to the Drafting Committee the question of the liability of legal persons. Following its consideration of a further report of the Drafting Committee,[390] the Commission provisionally adopted paragraph 7 of draft article 5, together with the commentary thereto.[391]

With regard to the topic "Protection of the atmosphere", the Commission had before it the third report of the Special Rapporteur.[392] The Commission considered and provisionally adopted draft guidelines 3, 4, 5, 6 and 7 and a preambular paragraph, together with commentaries thereto.[393]

With regard to the topic of "*Jus Cogens*", the Commission had before it the first report of the Special Rapporteur.[394] The Commission subsequently decided to refer draft conclusions 1 and 3, as contained in the report of the Special Rapporteur, to the Drafting Committee. The Commission subsequently took note of the interim report of the Chairperson of the Drafting Committee on draft conclusions 1 and 2 provisionally adopted by the Committee, which was submitted to the Commission for information.[395]

With respect to the topic "Protection of the environment in relation to armed conflicts", the Commission had before it the third report of the Special Rapporteur.[396] Following the debate in Plenary, the Commission decided to refer the draft principles, as contained in the report of the Special Rapporteur, to the Drafting Committee. The Commission subsequently took note of draft principles 4, 6, 7, 8, 14, 15, 16, 17 and 18, provisionally adopted by the Drafting Committee. Furthermore, the Commission provisionally adopted the draft principles it had taken note of during its sixty-seventh session, which had been renumbered and revised for technical reasons by the Drafting Committee at the present session, together with commentaries thereto.[397]

In relation to the topic "Immunity of State officials from foreign criminal jurisdiction", the Commission had before it the fifth report of the Special Rapporteur.[398] Upon its consideration of the report of the Drafting Committee on work done previously and taken note of by the Commission during its sixty-seventh session,[399] the Commission provisionally adopted draft articles 2 (*f*) and 6, together with commentaries thereto.[400]

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388 A/CN.4/698.

389 A/CN.4/L.873.

390 A/CN.4/L.873/Add.1.

391 *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), chap. VII.

392 A/CN.4/692.

393 *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), chap. VIII.

394 A/CN.4/693.

395 *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), chap. IX.

396 A/CN.4/700.

397 *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), chap. X.

398 A/CN.4/701.

399 A/CN.4/L.865.

400 *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), chap. XI.

As regards the topic "Provisional application of treaties", the Commission had before it the fourth report of the Special Rapporteur.[401] Following the debate in Plenary, the Commission decided to refer draft guideline 10, as contained in the fourth report of the Special Rapporteur, to the Drafting Committee. The Commission subsequently took note of draft guidelines 1 to 4 and 6 to 9, provisionally adopted by the Drafting Committee during the sixty-seventh and sixty-eighth sessions. Draft guideline 5 on unilateral declarations had been kept in abeyance by the Drafting Committee to be returned to at a later stage.[402]

Also, at its sixty-eighth session, the Commission decided to request the Secretariat to prepare a memorandum on ways and means for making the evidence of customary international law more readily available, which would survey the present state of the evidence of customary international law and make suggestions for its improvement and another memorandum analysing State practice in respect of treaties (bilateral and multilateral), deposited or registered in the last 20 years with the Secretary-General, which provide for provisional application, including treaty actions related thereto.[403]

The Commission decided to include in its long-term programme of work the topics: (*a*) The settlement of international disputes to which international organizations are parties; and (*b*) Succession of States in respect of State responsibility.[404]

Finally, the Commission recommended that it would hold the first part of its seventieth session in New York and requested the Secretariat to proceed with the necessary administrative and organizational arrangements to facilitate this. The Commission recommended that a seventieth anniversary commemorative event be held during its seventieth session in 2018.[405]

(*c*) Sixth Committee

The Sixth Committee of the General Assembly considered the agenda item "Report of the International Law Commission on the work of its sixty-eighth session" at its 20th to 30th and 33rd meetings, from 24 to 28 October and from 1 to 3 and 11 November 2016.[406] The Chair of the International Law Commission at its sixty-eighth session introduced the report of the Commission on the work of that session: chapters I to V and XIII at the 20th meeting, on 24 October; chapters VII to IX at the 24th meeting, on 27 October; and chapters X to XII at the 27th meeting, on 1 November.[407]

At the 33rd meeting, on 11 November 2016, the representative of Peru, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law

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[401] A/CN.4/699 and Add.1.

[402] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), chapter XII.

[403] *Ibid.,* chap. XIII, sect. A.

[404] *Ibid.,* chap. XIII, sect. B.

[405] *Ibid.*

[406] For the report of the Sixth Committee, see A/71/509. For the summary records, see A/C.6/71/SR.20–30, and 33.

[407] For the ILC report, see *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10).

Commission on the work of its sixty-eighth session".[408] At the same meeting, the representative of Slovakia, on behalf of the Bureau, introduced a draft resolution entitled "Protection of persons in the event of disasters".[409] At the same meeting, the Committee adopted the two draft resolutions without a vote.

(*d*) General Assembly

On 13 December 2016, the General Assembly adopted resolution 71/140 entitled "Report of the International Law Commission on the work of its sixty-eighth session". The Assembly expressed its appreciation to the Commission for the work accomplished at its sixty-eighth session and recommended that it continue its work on the topics in its current programme. Furthermore, the Assembly decided that the next session of the Commission should be held at the United Nations Office at Geneva from 1 May to 2 June and from 3 July to 4 August 2017.

On the same day, the General Assembly adopted resolution 71/141 entitled "Protection of persons in the event of disasters". The Assembly, *inter alia*, took note of the draft articles on protection of persons in the event of disasters, invited Governments to submit comments concerning the recommendation by the Commission to elaborate a convention on the basis of these articles, and decided to include in the provisional agenda of its seventy-third session an item entitled "Protection of persons in the event of disasters".

15. United Nations Commission on International Trade Law

(*a*) Forty-ninth session of the Commission

The United Nations Commission on International Trade Law (UNCITRAL) held its forty-ninth session in New York from 27 June to 15 July 2016 and adopted its report on 1, 8, and 15 July 2016. [410]

At the session, the Commission finalized and adopted the UNCITRAL Model Law on Secured Transactions,[411] the 2016 UNCITRAL Notes on Organizing Arbitral Proceedings,[412] and the Technical Notes on Online Dispute Resolution.[413]

The Commission had before it the reports of Working Group I (MSMEs) on the work of its twenty-fifth and twenty-sixty sessions outlining progress on the two topics on its current work agenda: (*a*) Key principles in business registration; and (*b*) Legal questions surrounding the creation of a simplified business entity.[414] The Commission commended the Working Group for the progress that was being made on the two topics and noted that the legislative texts resulting from the current work of the Working Group on those two topics should be published, including electronically, and in the six official

[408] A/C.6/71/L.26.

[409] A/C.6/71/L.31.

[410] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/71/17), paras. 1 and 12. For the membership of the United Nations Commission on International Trade Law, see para. 4.

[411] *Ibid.,* para. 119.

[412] *Ibid.,* para. 158.

[413] *Ibid.,* para. 217.

[414] *Ibid.,* para. 219.

languages of the United Nations, and be disseminated broadly to Governments and other interested bodies.[415]

Regarding the future work in the area of electronic commerce, the Commission recalled that at its forty-eighth session, in 2015, it had instructed the Secretariat to conduct preparatory work on identity management and trust services, cloud computing and mobile commerce. The Commission confirmed its decision that the Working Group IV (Electronic Commerce) could take up work on those topics upon completion of the work on the Model Law on Electronic Transferable Records.[416] In that context, the Secretariat and the Working Group were asked to continue to update and conduct preparatory work on the two topics including their feasibility in parallel and in a flexible manner and report back to the Commission so that it could make an informed decision at a future session.[417]

With respect to the work of the Working Group V on insolvency law, the Commission commended the Working Group for the progress that was being made on the three topics on its current work agenda,[418] and agreed that the Working Group should aim to tailor the mechanisms already provided in the UNCITRAL Legislative Guide on Insolvency Law[419] to specifically address MSMEs and develop new and simplified mechanisms as required. The Commission noted that the feasibility of developing a convention on international insolvency issues might continue to be studied informally by an *ad hoc*, open-ended group of interested participants on the basis of a list of issues prepared and distributed by the Secretariat.[420]

The Commission considered its technical assistance to law reform activities, including a draft guidance note on strengthening United Nations support to States to implement sound commercial law reforms.[421] The Commission endorsed the text of the draft guidance and requested the Secretary-General to finalize it in the light of deliberations at the current session, and to circulate the final text as broadly as possible to its intended users.[422]

The Commission also considered, *inter alia*, the items on promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts,[423] the status and promotion of UNCITRAL texts,[424] measures aimed at coordination and cooperation with other organizations active in the field of international trade law,[425] the role of UNCITRAL in promoting the rule of law at the national and international levels,[426] and the work programme of the Commission.[427]

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[415] Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/71/17), para. 224.

[416] *Ibid.,* para.235.

[417] *Ibid.*

[418] *Ibid.,* para.245.

[419] United Nations publication, Sales No. E.05.V.10.

[420] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17* (A/71/17), para. 247.

[421] *Ibid.,* paras. 255–262.

[422] *Ibid.,* para. 262.

[423] *Ibid.,* paras. 263–270.

[424] *Ibid.,* paras. 271–273.

[425] *Ibid.*, paras. 274–285.

[426] *Ibid.*, paras. 303–342.

[427] *Ibid.*, paras. 343–344.

(*b*) Sixth Committee

The Sixth Committee considered the item "Report of the United Nations Commission on International Trade Law on the work of its forty-ninth session" at its 11th, 12th, 19th and 24th meetings, on 10, 11, 20 and 27 October 2016.[428] For its consideration of the item, the Committee had before it the report of the United Nations Commission on International Trade Law on the work of its forty-ninth session.[429]

At the 11th meeting, on 10 October, the Chair of the United Nations Commission on International Trade Law at its forty-ninth session introduced the report of the Commission on the work of its forty-ninth session.

At the 19th meeting, on 20 October, the representative of Austria, on behalf of several States, introduced a draft resolution entitled "Report of the United Nations Commission on International Trade Law on the work of its forty-ninth session".[430] At the same meeting, the representative of Austria, on behalf of the Bureau, introduced three draft resolutions entitled "Model Law on Secured Transactions of the United Nations Commission on International Trade Law",[431] "2016 Notes on Organizing Arbitral Proceedings of the United Nations Commission on International Trade Law",[432] and "Technical Notes on Online Dispute Resolution of the United Nations Commission on International Trade Law".[433] At its 24th meeting, on 27 October, the Committee adopted the four draft resolutions without a vote.

(*c*) General Assembly

On 13 December 2016, the General Assembly adopted, upon the recommendation of the Sixth Committee, resolution 71/135 entitled "Report of the United Nations Commission on International Trade Law on the work of its forty-ninth session", resolution 71/136 entitled "Model Law on Secured Transactions of the United Nations Commission on International Trade Law", resolution 71/137 entitled "2016 Notes on Organizing Arbitral Proceedings of the United Nations Commission on International Trade Law", and resolution 71/138 entitled "Technical Notes on Online Dispute Resolution of the United Nations Commission on International Trade Law", without a vote.

16. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly

During the seventy-first session of the General Assembly, the Sixth Committee (Legal), in addition to the topics discussed above concerning the International Law Commission and the United Nations Commission on International Trade Law, considered

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[428] For the report of the Sixth Committee, see A/71/507. For the summary records, see A/C.6/71/SR.11, 12, 19 and 24.

[429] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17* (A/71/17).

[430] A/C.6/71/L.10.

[431] A/C.6/71/L.11.

[432] A/C.6/71/L.12.

[433] A/C.6/71/L.13.

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 2016.[434] The resolutions and decisions of the General Assembly described in this section were all adopted, without a vote, during the seventy-first session, on 13 December 2016, on the recommendation of the Sixth Committee.[435]

(*a*) Responsibility of States for internationally wrongful acts

The draft articles on responsibility of States for internationally wrongful acts were prepared by the International Law Commission and were submitted to the General Assembly at its fifty-sixth session in 2001.[436] The Assembly took note of the draft articles and commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action, and decided to include in the provisional agenda of its fifty-ninth session an item entitled "Responsibility of States for internationally wrongful acts".[437] The Assembly had previously considered the item triennially since its fifty-ninth session.

(i) *Sixth Committee*

During the seventy-first session of the General Assembly, the Sixth Committee considered the item at its 9th, 31st and 33rd meetings, on 7 October and on 4 and 11 November 2016.[438] For its consideration of the item, the Committee had before it the report of the Secretary-General on this topic.[439]

At the 33rd meeting, on 11 November 2016, the representative of Brazil introduced, on behalf of the Bureau, the text of a draft resolution entitled "Responsibility of States for internationally wrongful acts".[440] At the same meeting, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

By resolution 71/133 of 13 December 2016, the General Assembly acknowledged the growing number of decisions of international courts, tribunals and other bodies referring

[434] 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 https://www.un.org/en/ga/sixth/71/71_session.shtml.

[435] The Sixth Committee adopts drafts resolutions, which it recommends for adoption by the General Assembly. These draft 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.

[436] General Assembly resolution 56/83 of 12 December 2001, annex.

[437] *Ibid.*, paras. 1–4.

[438] For the report of the Sixth Committee, see A/71/505. For the summary records, see A/C.6/71/SR.9, 31 and 33.

[439] A/71/133.

[440] A/C.6/71/L.28.

to the articles, and commended them once again to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action. The Assembly requested the Secretary-General to invite Governments to submit further written comments on any future action regarding the articles, to update the compilation of decisions of international courts, tribunals and other bodies referring to the articles, and to invite Governments to submit information on their practice in this regard. It further requested the Secretary-General to submit this material well in advance of its seventy-fourth session. Finally, the General Assembly decided to further examine, within the framework of a working group of the Sixth Committee and with a view to taking a decision, the question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles. In this regard, the Assembly decided to include the item in the provisional agenda of its seventy-fourth session.

(*b*) Criminal accountability of United Nations officials and experts on mission

The item entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects" was included in the agenda of the General Assembly at its nineteenth session, in February 1965, when the General Assembly established the Special Committee on Peacekeeping Operations that was to undertake a comprehensive review of the whole question of peacekeeping operations in all their aspects.[441]

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,[442] submitted pursuant to General Assembly resolution 59/300.[443] At the same session, the General Assembly decided to establish an *ad hoc* committee, for the purpose of considering the report of the Group of Legal Experts, in particular its legal aspects and to report on its work to General Assembly under the agenda item entitled "Criminal Accountability of United Nations officials and experts on mission".[444] The Assembly had previously considered this item annually since its sixty-second session.

(i) *Sixth Committee*

During the seventy-first session of the General Assembly, the Sixth Committee considered the item at its 8th, 9th and 33rd meetings, on 7 October and on 11 November

[441] General Assembly resolution 2006 (XIX) of 18 February 1965.

[442] A/60/980.

[443] General Assembly decision 61/503A of 13 September 2006.

[444] 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. For more information, see https://legal.un.org/committees/criminal_accountability/.

2016.[445] For its consideration of the item, the Committee had before it the report of the Secretary-General on this topic.[446]

At the 33rd meeting, on 11 November 2016, the representative of Pakistan, on behalf of the Bureau, introduced a draft resolution entitled "Criminal accountability of United Nations officials and experts on mission", which the Committee adopted without a vote.[447]

(ii) *General Assembly*

On 13 December 2016, the General Assembly adopted resolution 71/134 entitled "Criminal accountability of United Nations officials and experts on mission" without a vote. The General Assembly, *inter alia*, decided that the consideration of the report of the Group of Legal Experts, in particular its legal aspects, would be continued at the seventy-third session in the context of a working group of the Sixth Committee. The Assembly reiterated its request to the Secretary-General to report to it at its seventy-first session on the implementation of the resolution. It also decided that the consideration of the report of the Group of Legal Experts, in particular its legal aspects, would be continued at the seventy-third session in the context of a working group of the Sixth Committee, while including the item in the provisional agenda of the seventy-second session.

(*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,[448] 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 General Assembly authorized the continuation of the Programme of Assistance annually until its twenty-sixth session, biennially until its sixty-fourth session and annually thereafter.

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 General Assembly.

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[445] For the report of the Sixth Committee, see A/71/506. For the summary records, A/C.6/71/SR.8, 9 and 33.

[446] A/71/167.

[447] A/C.6/71/L.25.

[448] General Assembly resolution 2099 (XX) of 20 December 1965. For further information on the Programme of Assistance, see https://legal.un.org/poa/.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 17th, 18th, 30th and 32nd meetings, on 20 October and on 3 and 7 November 2016.[449] For its consideration of the item, the Committee had before it the report of the Secretary-General.[450]

At the 30th meeting, on 3 November, the representative of Ghana, on behalf of the Bureau, introduced a draft resolution entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".[451] At its 32nd meeting, on 7 November, the Committee adopted the draft resolution, without a vote.

(ii) *General Assembly*

On 13 December 2016, the General Assembly adopted resolution 71/139 entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law". In the resolution, the General Assembly noted resources have been provided under the programme budget for the organization of the Regional Courses in International Law on an annual basis and the further development of the Audiovisual Library of International Law. The Assembly also authorized the Secretary-General to carry out the activities specified in his reports on this item, including the following activities to be financed from the provisions in the regular budget: the International Law Fellowship Programme and the Regional Courses in International Law for Africa, for Latin-America and the Caribbean and for Asia-Pacific, with a minimum of 20 fellowships for each course; the Audiovisual Library of International Law; and the dissemination of legal publications and lectures of the Audiovisual Library to developing countries to the extent that there are sufficient resources. The General Assembly requested the Secretary-General to continue to include resources under the proposed programme budget for the biennium 2018–2019 for those activities.

(*d*) Diplomatic protection

At its sixty-first session, the General Assembly took note of the draft articles on diplomatic protection adopted by the International Law Commission at its fifty-eighth session, in 2006, and invited Governments to submit comments concerning the recommendation of the Commission that the Assembly elaborate a convention on the basis of the draft articles.[452] The Assembly had considered previously this item triennially since its sixty-second session.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 9th, 10th, 31st and 32nd meetings, on 7 and 10 October, 4 and 7 November 2016, respectively.[453]

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[449] For the report of the Sixth Committee, see A/71/508. For the summary records, see A/C.6/71/SR.17, 18, 30 and 32.

[450] A/71/432.

[451] A/C.6/71/L.17.

[452] General Assembly resolution 61/35 of 4 December 2006.

[453] For the report of the Sixth Committee, see A/71/510. For the summary records, see A/C.6/71/SR.9, 10, 31 and 32.

Pursuant to resolution 68/113 of 16 December 2013, the Committee decided, at its 1st meeting, on 3 October 2016, to establish a Working Group on Diplomatic Protection open to all States Members of the United Nations or members of the Specialized Agencies or of the International Atomic Energy Agency. The Working Group, which was chaired by Thembile Joyini (South Africa), held two meetings, on 17 and 19 October 2016. At its 31st meeting, on 4 November 2016, the Committee heard and took note of the oral report of the Chair of the Working Group.

At the 31st meeting, on 4 November 2016, the representative of South Africa, on behalf of the Bureau, introduced a draft resolution entitled "Diplomatic protection".[454] At the 32nd meeting, on 7 November 2016, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

By resolution 71/142 of 13 December 2016, the General Assembly commended once again the articles on diplomatic protection to the attention of Governments and invited them to submit in writing to the Secretary-General any further comments, including comments concerning the recommendation of the Commission to elaborate a convention on the basis of the articles. The Assembly also decided to include the item in the provisional agenda of its seventy-fourth session and, within the framework of a working group of the Sixth Committee, in the light of the written comments of Governments, as well as views expressed in the debates held at the sixty-second, sixty-fifth, sixty-eighth and seventy-first sessions of the General Assembly, to continue to examine the question of a convention on diplomatic protection, or any other appropriate action, on the basis of the articles and to also identify any difference of opinion on the articles. The agenda item will be considered next at the seventy-fourth session (2019).

(*e*) Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm

The topic "International liability for injurious consequences arising out of acts not prohibited by international law" was included in the programme of work of the Commission in 1978. In 1997, the Commission decided to deal first with prevention aspects of the topic under the subtitle "Prevention of transboundary damage from hazardous activities". The Commission, in 2001, completed the draft articles on prevention of transboundary harm from hazardous activities and recommended to the General Assembly the elaboration of a convention on the basis of the draft articles.[455]

In 2002, the Commission resumed its work on the second part of the topic under the subtitle "International liability in case of loss from transboundary harm arising out of hazardous activities".[456] In 2006, the Commission completed the liability aspects by adopting draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities and recommended to the General Assembly that it endorse the draft principles by a resolution and urge States to take national and international action to

[454] A/C.6/71/L.14.

[455] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10 and Corr.1).

[456] See General Assembly resolution 56/82 of 12 December 2001 and *Official Records of the General Assembly, Fifty-seventh Session, Supplement No.10* (A/57/10 and Corr.1).

implement them. [457] The General Assembly at its sixty-first session, took note of the principles presented by the Commission and decided to include in the provisional agenda of its sixty-second session an item entitled "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm".[458] The Assembly had previously considered the item triennially since its sixty-second session.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 18th, 31st, and 32nd meetings, on 20 October and on 4 and 7 November 2016, respectively. [459]

At the 31st meeting, on 4 November 2013, the representative of Czechia, on behalf of the Bureau, introduced a draft resolution entitled "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm".[460] At the 32nd meeting, on 7 November 2016, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

By the terms of the resolution 71/143 of 13 December 2016, the General Assembly invited Governments to submit further comments on any future action, in particular on the form of the respective articles and principles, bearing in mind the recommendations made by the Commission in that regard, including in relation to the elaboration of a convention on the basis of the articles, as well as on any practice in relation to the application of the articles and principles. The Assembly also requested the Secretary-General to submit a compilation of decisions of international courts, tribunals and other bodies referring to the articles and the principles. Finally, it decided to include this item in the provisional agenda of its seventy-fourth session.

(*f*) Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

This item was included in the agenda of the thirty-seventh session of the General Assembly, in 1982, at the request of Denmark, Finland, Norway and Sweden.[461] The Assembly had previously considered the item biennially since its thirty-seventh session.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 10th, 11th and 33rd meetings, on 10 October and 11 November 2016. [462]

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[457] See *Official Records of the General Assembly, Sixty-first Session, Supplement No.10* (A/61/10).

[458] General Assembly resolution 61/36 of 19 December 2006.

[459] For the report of the Sixth Committee, see A/71/511. For the summary records, see A/C.6/71/SR.18, 31 and 32.

[460] A/C.6/71/L.20.

[461] A/37/142.

[462] For the report of the Sixth Committee, see A/71/512. For the summary records, see A/C.6/71/SR.10, 11 and 33.

At the 33rd meeting, on 11 November 2016, the representative of Sweden, on behalf of several States, introduced a draft resolution entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts".[463] At the same meeting, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

On 13 December 2016, the General Assembly adopted resolution 71/144 entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts". The Assembly requested the Secretary-General to submit to the Assembly at its seventy-third session a report on the status of the Additional Protocols relating to the protection of victims of armed conflicts, as well as on measures taken to strengthen the existing body of international humanitarian law, including with respect to its dissemination and full implementation at the national level, based on information received from Member States and the International Committee of the Red Cross. Finally, it decided to include this item in the provisional agenda of its seventy-third session.

(*g*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

This item was included in the agenda of the thirty-fifth session of the General Assembly, in 1980, at the request of Denmark, Finland, Iceland, Norway and Sweden.[464] The General Assembly had previously considered the item annually at its thirty-sixth to forty-third sessions, and biennially thereafter.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 11th, 30th and 32nd meetings, on 10 October and on 3 and 7 November 2016.[465] For its consideration of the item, the Committee had before it the report of the Secretary-General. [466]

At the 30th meeting, on 3 November, the representative of Finland, on behalf of several States, introduced a draft resolution entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives".[467] At the 32nd meeting, on 7 November, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

On 13 December 2016, the General Assembly adopted resolution 71/145 entitled "Consideration of effective measures to enhance the protection, security and safety of

[463] A/C.6/71/L.21.

[464] A/35/142.

[465] For the report of the Sixth Committee, see A/71/513. For the summary records, see A/C.6/71/SR.11, 30 and 32.

[466] A/71/130 and Add.1.

[467] A/C.6/71/L.18.

diplomatic and consular missions and representatives". The Assembly decided to include this item in the provisional agenda of its seventy-third session.

(*h*) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

(i) *Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization*[468]

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.[469]

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.[470]

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.[471]

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.[472] Since its thirtieth session, the General Assembly has considered the report of the Special Committee annually.

The Special Committee met at United Nations Headquarters from 16 to 24 February 2016 and considered the items "Maintenance of international peace and security", "Peaceful settlement of disputes", "*Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council*" and "Working methods of the Special Committee and identification of new subjects".[473]

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[468] 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 https://legal.un.org/committees/charter/.

[469] A/7659.

[470] General Assembly resolution 3349 (XXIX) of 17 December 1974.

[471] A/8792.

[472] General Assembly resolution 3499 (XXX) of 15 December 1975.

[473] For the report of the Special Committee, see *Official Records of the General Assembly, Seventieth Session, Supplement No. 33* (A/71/33).

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 15th, 16th, 30th, 32nd and 33rd meetings, on 14 October and on 3, 7 and 11 November 2016.[474]

At the 30th meeting, on 3 November 2016, the representative of Zambia, on behalf of the bureau, introduced the draft resolution entitled "Commemoration of the seventieth anniversary of the International Court of Justice",[475] which was adopted at the 32nd meeting, on 7 November 2016, without a vote.

At the 33rd meeting, on 11 November, the representative of Zambia, 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",[476] which was adopted at the same meeting without a vote.

(iii) *General Assembly*

On 13 December 2016, the General Assembly adopted resolution 71/146 entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization". The Assembly, *inter alia*, requested the Special Committee to continue its consideration of all proposals concerning the question of the maintenance of international peace and security and of 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, to keep on its agenda the question of the peaceful settlement of disputes between States, and to continue to consider, on a priority basis, ways and means of improving the Committee's working methods and enhancing its efficiency.

On the same day, the General Assembly also adopted resolution 71/147 entitled "Commemoration of the seventieth anniversary of the International Court of Justice".

(*i*) The rule of law at the national and international levels

This item was included in the provisional agenda of the sixty-first session of the General Assembly, in 2006, at the request of Liechtenstein and Mexico.[477] The General Assembly had previously considered the item annually since its sixty-first session.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 4th, 5th, 6th, 7th, 8th and 33rd meetings on 5, 6 and 7 October and on 11 November 2016.[478] For its consideration of the item,

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[474] For the report of the Sixth Committee, see A/71/514. For the summary records, see A/C.6/71/SR.15, 16, 30, 32 and 33.

[475] A/C.6/71/L.16.

[476] A/C.6/71/L.15.

[477] A/61/142.

[478] For the report of the Sixth Committee, see A/71/515. For the summary records, see A/C.6/71/SR.4, 5, 6, 7, 8 and 33.

the Committee had before it the report of the Secretary-General on strengthening and coordinating United Nations rule of law activities.[479]

At the 33rd meeting, on 16 November 2016, the representative of Liechtenstein, on behalf of the Bureau, introduced a draft resolution entitled "The rule of law at the national and international levels".[480] At the same meeting, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

On 13 December 2016 the General Assembly adopted resolution 71/148 entitled "The rule of law at the national and international levels". The General Assembly decided to include this item in the provisional agenda of its seventy-second session and invited Member States to focus their comments in the upcoming Sixth Committee debate on the subtopics "Ways and means to further disseminated international law to strengthen the rule of law".

(*j*) The scope and application of the principle of universal jurisdiction

This item 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 on behalf of the Group of African States.[481] The General Assembly had previously considered the item annually since its sixty-fourth session.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 13th, 14th, 15th, 31st, and 32nd meetings, on 11, 13 and 14 October and on 4 and 7 November 2016.[482] For its consideration of the item, the Committee had before it the reports of the Secretary-General submitted to the General Assembly at its sixty-fifth to seventy-first sessions.[483]

At its 1st meeting, on 3 October, the Committee established a working group pursuant to General Assembly resolution 70/119 to continue to undertake a thorough discussion of the scope and application of the principle of universal jurisdiction. The Working Group held three meetings, on 13, 14 and 21 October. At its 31st meeting, on 4 November, the Committee heard and took note of the oral report of the Chair of the Working Group.[484]

At the 31st meeting, on 4 November, the representative of Kenya, on behalf of the Bureau, introduced a draft resolution entitled "The scope and application of the principle

[479] A/71/169.

[480] A/C.6/71/L.27.

[481] A/63/237/Rev.1.

[482] For the report of the Sixth Committee, see A/71/516. For the summary records, see A/C.6/71/SR.13, 14, 15, 31 and 32 .

[483] A/65/181, A/66/93 and Add.1, A/67/116, A/68/113, A/69/174, A/70/125, and A/71/111.

[484] A/C.6/71/SR.31.

of universal jurisdiction".[485] At the 32nd meeting, on 7 November, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

In resolution 71/149 of 13 December 2016, the General Assembly, *inter alia*, invited Member States and relevant observers, as appropriate, to submit, before 28 April 2017, information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties, their national legal rules and judicial practice. The Assembly further requested the Secretary-General to prepare and submit to it, at its seventy-second session, a report based on such information and observations. Moreover, the Assembly decided that the Sixth Committee should continue its consideration of the item, without prejudice to the consideration of the topic and related issues in other forums of the United Nations. The Assembly decided that the Working Group should be open to all Member States and that relevant observers to the General Assembly would be invited to participate in the work of the Working Group.

(*k*) 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.[486] The Assembly further considered this item at its sixty-sixth and sixty-eighth sessions.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 18th, 19th and 33rd meetings, on 20 October and 11 November 2016, respectively.[487]

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[485] A/C.6/71/L.23.

[486] General Assembly resolution 63/124 of 11 December 2008.

[487] For the report of the Sixth Committee, see A/71/517. For the summary records, see A/C.6/71/SR.18, 19 and 33.

At the 33rd meeting, on 11 November 2016, the representative of Japan, on behalf of the Bureau, introduced a draft resolution entitled "The Law of Transboundary Aquifers".[488] At the same meeting, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

On 13 December 2016, the General Assembly adopted resolution 71/150 entitled "The law of transboundary aquifers". The Assembly, *inter alia*, once again commended the draft articles annexed to its resolution 68/118 to the attention of Governments as guidance for bilateral or regional agreements and arrangements for the proper management of transboundary aquifers, and encouraged the International Hydrological Programme of the United Nations Educational, Scientific and Cultural Organization to continue its contribution by providing further scientific and technical assistance upon the consent of the recipient State and within its mandate. The Assembly further decided to include the item in the provisional agenda of its seventy-fourth session.

(*l*) 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.[489] At that session, the General Assembly decided to establish the *ad hoc* committee on International Terrorism, consisting of 35 members.[490]

At its fifty-first session, 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.[491] Through the work of the Committee, the General Assembly has thus far adopted three counter-terrorism instruments.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 1st, 2nd, 3rd, 4th, 31st and 33rd meetings, on 3, 4 and 5 October and on 4 and 11 November 2016.[492] For its consideration of the item, the Committee had before it the report of the Secretary-General on measures to eliminate international terrorism.[493]

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[488] A/C.6/71/L.22.

[489] A/8791 and Add.1 and Add.1/Corr.1.

[490] General Assembly resolution 3034 (XXVII) of 18 December 1972.

[491] General Assembly resolution 51/210 of 17 December 2016.

[492] For the report of the Sixth Committee, see A/71/182, Add.1 and Add.2. For the summary records, see A/C.6/71/SR.1, 2, 3, 4, 31 and 33.

[493] A/71/182, Add.1 and Add.2.

At its 1st meeting, on 3 October 2016, the Committee established a Working Group pursuant to General Assembly resolution 70/120 with a view to finalizing the process on the draft comprehensive convention on international terrorism, as well as discussions on the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations. The Working Group was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. The Working Group held three meetings, on 17 and 20 October and on 1 November. At its 31st meeting, on 4 November, the Committee heard and took note of the oral report by the Chair of the Working Group on the work of the Working Group and on the results of the informal consultations held during the current session.[494]

At the 33rd meeting, on 11 November, the representative of Canada, on behalf of the Bureau, introduced a draft resolution entitled "Measures to eliminate international terrorism".[495] At the same meeting, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

On 13 December 2016, the General Assembly adopted resolution 71/151 entitled "Measures to eliminate international terrorism". The Assembly, *inter alia*, decided to recommend that the Sixth Committee, at the seventy-second session of the General Assembly, establish a working group with a view to finalizing the process on the draft comprehensive convention on international terrorism as well as discussions on the item included in its agenda by General Assembly resolution 54/110, while encouraging all Member States to redouble their efforts during the intersessional period towards resolving any outstanding issues.

(*m*) Revitalization of the work of the General Assembly

This item, which was included in the agenda of the forty-sixth session of the General Assembly in 1991, had originally been proposed for inclusion in the draft agenda of that session by the President of the General Assembly at its forty-fifth session.[496] The General Assembly had previously considered the question at its forty-sixth to forty-eighth, fifty-second to fifty-third, and fifty-fifth[497] to seventieth sessions.

At its 2nd plenary meeting, on 16 September 2016, the General Assembly, on the recommendation of the General Committee, decided to allocate the item to all the Main Committees for the purpose of discussing their working methods and considering and taking action on their respective tentative programmes of work for the seventy-first session of the General Assembly.

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[494] See A/C.6/71/SR.31.

[495] A/C.6/71/L.24.

[496] See General Assembly decision 45/461 of 16 September 1991.

[497] At its fifty-fourth session, the General Assembly decided to defer consideration of the item (General Assembly decision 54/491).

(i) *Sixth Committee*

The Sixth Committee considered the item at its 32nd and 33rd meetings, on 7 and 11 November 2016.[498]

At the 33rd meeting, on 11 November, the Chair introduced a draft decision containing the provisional programme of work of the Committee for the seventy-second session of the General Assembly, as proposed by the Bureau.[499] At the same meeting, the Committee adopted the draft decision.

(ii) *General Assembly*

In its decision 71/528 of 13 December 2016, the General Assembly noted that the Sixth Committee has decided to adopt the provisional programme of work for the seventy-second session of the General Assembly, as proposed by the Bureau.

(*n*) Administration of justice at the United Nations

The General Assembly had previously considered the item at its fifty-fifth to fifty-seventh sessions, at its fifty-ninth session and at its sixty-first to sixty-ninth sessions, in the framework of both the Fifth and Sixth Committee, with the aim of introducing a new system for handling internal disputes and disciplinary matters in the United Nations.

At its sixty-second session, 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.[500]

At its sixty-third session, the General Assembly adopted the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal; it 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.[501]

Outstanding legal matters have been considered by the Sixth Committee in the ensuing years. These matters included, *inter alia*, the rules of procedure of the two tribunals, the scope *ratione personae* of the administration of justice system and the scope and functioning of the Office of Staff Legal Assistance (OSLA).

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[498] For the report of the Sixth Committee, see A/71/519. For the summary records, see A/C.6/71/SR.32 and 33.

[499] A/C.6/71/L.30.

[500] General Assembly resolution 62/228.

[501] General Assembly resolution 63/253.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 16th and 22nd meetings, on 14 and 26 October 2016.[502] For its consideration of the item, the Committee had before it the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services,[503] the report of the Secretary-General on the administration of justice at the United Nations,[504] and the report of the Internal Justice Council on the administration of justice at the United Nations.[505]

At the 22nd meeting, on 26 October 2016, the Committee received a report on the results of the informal consultations and authorized its Chair to send a letter to the President of the General Assembly with a request that it be brought to the attention of the Chair of the Fifth Committee and circulated as a document of the General Assembly. The letter was circulated as an annex to the document A/C.5/71/10.

(ii) *General Assembly*

On 23 December 2016, the General Assembly adopted resolution 71/266 entitled "Administration of justice at the United Nations", without a vote, on the recommendation of the Fifth committee. The Assembly, *inter alia*, took note of the reports of the Secretary-General on administration of justice at the United Nations and on the activities of the Office of the United Nations Ombudsman and Mediation Services, the note by the Secretary-General transmitting the report of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations, the report of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations, and revised estimates relating to the programme budget for the biennium 2016–2017, the report of the Internal Justice Council on administration of justice at the United Nations and the related report of the Advisory Committee on Administrative and Budgetary Questions.[506] The Assembly also endorsed the conclusions and recommendations contained in the report of the Advisory Committee.

(*o*) 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.[507] In 2016, the Committee was composed of the following 19 Member States: Bulgaria, Canada, China, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, France, Honduras, Hungary, Iraq, Libya, Malaysia, Mali, Russian

[502] For the summary records of the Sixth Committee, see A/C.6/71/SR.16 and 22, A/71/62 and A/71/62/Rev.1.

[503] A/71/157.

[504] A/71/164.

[505] A/71/158.

[506] A/71/707.

[507] General Assembly resolution 2819 (XXVI) of 15 December 1971.

Federation, Senegal, Spain, United Kingdom of Great Britain and Northern Ireland and the United States of America.

In 2016, the Committee held the following meetings: 275th meeting, on 3 February 2016; the 276th meeting, on 19 April 2016; the 277th meeting, on 29 July 2016; the 278th meeting, on 29 September 2016; and the 279th meeting, on 21 October 2016. During its meetings, the Committee considered a number of topics, namely (i) entry visas issued by the host country; (ii) host country activities: activities to assist members of the United Nations community; and (iii) other matters. At its 279th meeting, the Committee approved a number of recommendations and conclusions, which were contained in chapter IV of its report.[508]

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 30th and 33rd meetings, on 3 and 11 November 2016.[509] The Chair of the Committee on Relations with the Host Country introduced the report of the Committee.

At the 33rd meeting, on 11 November 2016, the representative of Cyprus, on behalf of the Bureau, introduced a draft resolution entitled "Report of the Committee on Relations with the Host Country".[510] At the same meeting, the Committee adopted the draft resolution without a vote.

(iii) *General Assembly*

On 13 December 2016, General Assembly adopted resolution 71/152 entitled "Report of the Committee on Relations with the Host Country". The Assembly, *inter alia*, endorsed the recommendations and conclusions contained in the report of the Committee on Relations with the Host Country and decided to include the item entitled "Report of the Committee on Relations with the Host Country" in the provisional agenda of its seventy-second session.

(*p*) Observer Status in the General Assembly

(i) *Sixth Committee*

The Committee considered requests for observer status in the General Assembly for the Cooperation Council of Turkic-speaking States, for the Eurasian Economic Union in the General Assembly, for the Community of Democracies in the General Assembly, for the International Conference of Asian Political Parties in General Assembly, for the Conference of Ministers of Justice of the Ibero-American Countries in the General Assembly, for the International Youth Organization of Ibero-America in the General Assembly, for the Pacific Islands Development Forum in the General Assembly, for the International Chamber of Commerce in the General Assembly, and for the Central American Bank for

[508] *Official Records of the General Assembly, Seventieth session, Supplement No. 26* (A/71/26), chap. IV.

[509] For the report of the Sixth Committee, see A/71/522. For the summary records, see A/C.6/71/SR.30 and 33.

[510] A/C.6/71/L.29.

Economic Integration in the General Assembly at its 12th, 13th, 31st, 32nd, and 33rd meetings on 11 October and 4, 7, and 11 November 2016.[511]

At the 31st meeting, on 4 November, the Chair of the Committee announced that the sponsors of the request for observer status in the General Assembly for the International Conference of Asian Political Parties had decided not to pursue the request at the current session, while reserving the right to present it at a future session.[512]

(ii) *General Assembly*

In its resolutions 71/153, 71/154,71/155, 71/156, and 71/157, adopted on 13 December 2016, the General Assembly granted observer status to the Conference of Ministers of Justice of the Ibero-American Countries in the General Assembly, the International Youth Organization for Ibero-America in the General Assembly, the Pacific Islands Development Forum in the General Assembly, the International Chamber of Commerce in the General Assembly, and the Central American Bank for Economic Integration in the General Assembly.

By its decisions 71/524, 71/525 and 71/526, adopted on 13 December 2016, the General Assembly decided to defer a decision on the requests for observer status for the Cooperation Council of Turkic-speaking States in the General Assembly, the Eurasian Economic Union in the General Assembly, and the Community of Democracies in the General Assembly, respectively, to its seventy-second session.

17. *Ad hoc* international criminal tribunals[513]

(*a*) Organization of the International Criminal Tribunal for the former Yugoslavia

(i) *Organization of the International Criminal Tribunal for the former Yugoslavia*[514]

In 2016, Judge Carmel Agius (Malta) and Judge Liu Daqun (China) continued to serve as President and Vice-President of the Tribunal, respectively.

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[511] For the reports of the Sixth Committee, see A/71/523, A/71/524, A/71/525, A/71/526, A/71/527, A/71/528, A/71/529, A/71/530, A/71/521, respectively. For the summary records, see A/C.6/71/SR.12, 13, 31, 32 and 33.

[512] For the report of the Sixth Committee, see A/71/526. For the summary records, see A/C.6/71/SR.12 and 31.

[513] This section covers the International Criminal Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals, established by Security Council resolutions 827 (1993) of 25 May 1993 and 1966 (2010) of 22 December 2010, respectively. Further information regarding the judgments of the International Criminal Tribunal for Yugoslavia and the International Residual Mechanism for Criminal Tribunal is contained in chapter VII of this publication.

[514] For more information, see, for the period 1 August 2015 to 31 July 2016, the twenty-third annual 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/71/263–S/2016/670); and for the period 1 August 2016 to 31 July 2017, the twenty-fourth annual report (A/72/266–S/2017/662). See also the assessment and report of Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534 (2004) covering the period from 17 November 2015 to

By resolution 2306 (2016) of 6 September 2016 and acting under Chapter VII of the Charter of the United Nations, the Security Council amended the Statute of the ICTY by adding article 13 quinquies, which allowed for the appointment of an *ad hoc* judge in the event that no permanent judge was available for assignment to the Appeals Chamber.

By resolution 2329 (2016) of 19 December 2016 and acting under Chapter VII of the Charter of the United Nations, the Security Council extended the term of office of the following permanent judges at the Tribunal, who were members of the Trial Chambers and the Appeals Chamber, until 30 November 2017 or until the completion of the cases to which they were assigned, if sooner: Carmel Agius (Malta), Liu Daqun (China), Christoph Flügge (Germany), Theodor Meron (United States of America), Bakone Justice Moloto (South Africa), Fausto Pocar (Italy) and Alphons Orie (The Netherlands).

In the same resolution, the Security Council decided to reappoint Serge Brammertz (Belgium) as Prosecutor of the Tribunal, notwithstanding the provisions of article 16, paragraph 4, of the Statute of the International Tribunal related to the length of office of the Prosecutor, for a term with effect from 1 January 2017 until 30 November 2017, which was subject to an earlier termination by the Security Council upon the completion of the work of the Tribunal. Throughout the period, John Hocking (Australia) continued to serve as Registrar.

In the same resolution, the Security Council decided to extend the term of office of Judge Carmel Agius (Malta) as President of the Tribunal until 31 December 2017 or until one month after the completion of the cases, if sooner.

The following permanent judges left the Tribunal at the conclusion of their respective mandates in 2016: O-Gon Kwon (Republic of Korea), Jean-Claude Antonetti (France), Burton Hall (Bahamas), Howard Morrison (United Kingdom), Mandiaye Niang (Senegal), Guy Delvoie (Belgium) and Koffi Kumelio A. Afanđe (Togo).

At the end of 2016, seven permanent judges from seven countries served at the Tribunal: Carmel Agius (President, Malta), Liu Daqun (Vice-President, China), Christoph Flügge (Germany), Alphons Orie (Netherlands), Fausto Pocar (Italy), Theodor Meron (United States of America) and Bakone Justice Moloto (South Africa). On 19 September 2016, Burton Hall (Bahamas) was appointed by the Secretary-General pursuant to article 13 *quinquies* of the Statute of the ICTY as an *ad hoc* judge of the Tribunal, so that he might be assigned to interlocutory appeals from the *Mladić* trial on an *ad hoc* and temporary basis. [515]

At the end of 2016, the *ad litem* judges of the Tribunal were as follows: Melville Baird (Trinidad and Tobago), Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo) and Flavia Lattanzi (Italy).

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17 May 2016 (S/2016/454, annex I) and the Report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the Security Council in accordance with paragraph 6 of Security Council resolution 1534 (2004) (S/2016/976, annex II).

[515] See letter dated 13 September 2016 from the Secretary-General addressed to the President of the Security Council (S/2016/794) and letter dated 19 September 2016 from the President of the Security Council addressed to the Secretary-General (S/2016/795).

(ii) *Composition of the Appeals Chamber*

At the end of 2016, the composition of the Appeals Chamber was as follows: Carmel Agius (Presiding, Malta), Liu Daqun (China), Fausto Pocar (Italy), Theodor Meron (United States of America), Bakone Justice Moloto (South Africa),[516] and Burton Hall (Bahamas).[517]

(iii) *Organization of the International Residual Mechanism for Criminal Tribunals*[518]

By resolution 1966 (2010) of 22 December 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to establish the International Residual Mechanism for Criminal Tribunals ("the Mechanism") with two branches, the branch for the ICTR which commenced functioning on 1 July 2012 and the branch for the ICTY which commenced functioning on 1 July 2013, to carry out a number of essential functions of the Tribunals after their closure. By the same resolution, the Security Council also decided to adopt that Statute of the Mechanism, contained in the annex.

By resolution 2269 (2016) of 29 February 2016 and acting under Chapter VII of the Charter of the United Nations, the Security Council decided to appoint Serge Brammertz as Prosecutor of the International Residual Mechanism for Criminal Tribunals with effect from 1 March 2016 until 30 June 2018, and further decided that, notwithstanding the relevant provisions of the Statute of the Mechanism, the judges, the Prosecutor and the Registrar of the Mechanism might be appointed or reappointed for a two-year term. In June 2016, and further to Security Council resolution 2269 (2016) and article 10 (3) of the statute of the Mechanism, the Secretary-General reappointed the 25 judges for a new, two-year term, from 1 July 2016 to 30 June 2018.[519]

At the end of 2016, the President of the Mechanism was Judge Theodor Meron (United States of America), the Prosecutor was Serge Brammertz (Belgium), and the Registrar was John Hocking (Australia).

(*b*) General Assembly

On 9 November 2016, the General Assembly adopted two decisions taking notes of the annual reports of the ICTY and the Mechanism, respectively: decision 71/510 entitled "Report of the International Tribunal for the Prosecution of Persons Responsible for

[516] See annual reports of the International Tribunal for the Former Yugoslavia (A/71/263–S/2016/670 and A/72/266–S/2017/662). Since Judge Moloto was also part of the Trial Chamber in the *Mladić* case, he could not be assigned to interlocutory appeals from the same case. As a result, there was an insufficient number of judges to enable the Appeals Chamber to deal with any interlocutory appeals from the *Mladić* case.

[517] See S/2016/794 and S/2016/795.

[518] For more information on the Mechanism, see, for the period 1 July 2015 to 30 June 2016, the fourth annual report of the International Residual Mechanism for Criminal Tribunals (A/71/262–S/2016/669); and for the period 1 July 2016 to 30 June 2017, the fifth annual report of the International Residual Mechanism for Criminal Tribunals (A/72/261–S/2017/661).

[519] See the fifth annual report of the International Residual Mechanism for Criminal Tribunals (A/72/261–S/2017/661).

Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991"; and decision 71/511 entitled "Report of the International Residual Mechanism for Criminal Tribunals".

On 23 December 2016, the General Assembly adopted, on the recommendation of the Fifth Committee and without a vote, resolution 71/268, 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", and resolution 71/282, entitled "Financing of the International Residual Mechanism for Criminal Tribunals".

(*c*) Security Council

On 19 December 2016, the Security Council adopted resolution 2329 (2016) concerning the ICTY. Acting under Chapter VII of the Charter of the United Nations, the Security Council further reiterated its request to the ICTY to complete its work and facilitate the closure of the Tribunal as expeditiously as possible with the aim of completing the transition to the Mechanism, took note of the request of the President of the ICTY for a final extension of the terms of office of the permanent judges of the ICTY, until 30 November 2017 or until the completion of the cases to which they were or would be assigned, if sooner, and strongly emphasized that such extensions and reappointment should be final.

B. General review of the legal activities of intergovernmental organizations related to the United Nations

1. International Labour Organization[520]

(*a*) Amendments to international labour conventions and resolutions adopted by the International Labour Conference during its 105th Session (Geneva, May to June 2016)[521]

The International Labour Conference adopted at its 105th Session amendments to two international labour Conventions and one Recommendation and eleven resolutions of which five are highlighted below.

(i) *Amendments of 2016 to the Code of the Maritime Labour Convention, 2006*

Following consideration and adoption by the Special Tripartite Committee established under the Maritime Labour Convention, 2006 (MLC, 2006) at its second meeting on 8 to 10 February 2016, the International Labour Conference adopted, at its 105th Session (2016), amendments to the Code of the MLC, 2006.[522] The amendments to the Code implementing Regulation 4.3—Health and safety protection and accident prevention—are intended to eliminate shipboard harassment and bullying by ensuring that these issues are covered by the health and safety policies and measures required by the Code. The amendments to the Code implementing Regulation 5.1—Flag State responsibilities—are intended to allow an extension of not more than five months of the validity of the maritime labour certificate issued for ships in cases where the renewal inspection required by paragraph 2 of Standard A5.1.3 has been successfully completed, but a new certificate cannot immediately be issued to that ship.

(ii) *Amendments of 2016 to the Annexes of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)*

As recommended by the *Ad hoc* Tripartite Maritime Committee that met on 10 to 12 February 2016, the International Labour Conference adopted amendments to the annexes of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). The amendments establish that, subject to the overriding requirements of article 3 of the Convention, the seafarers' identity document shall conform to the mandatory requirements for electronic machine-readable travel document contained in International Civil Aviation Organization (ICAO) Doc 9303 on machine readable travel documents, Seventh

[520] For official documents and more information in the International Labour Organization, see http://ilo.org.

[521] The texts adopted at the 105th Session (2016) of the International Labour Conference are available in English, French and Spanish at: http://www.ilo.org/ilc/ILCSessions/105/texts-adopted/lang--en/.

[522] Amendments of 2016 to the Code of the Maritime Labour Convention, 2006, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_502375.pdf.

Edition, and as subsequently amended. The amendments thereby changed the biometric in the seafarers' identity document from a fingerprint template in a two-dimensional barcode to a facial image stored in a contactless chip. Furthermore, the amendments establish restrictions for the data contained in the relevant national electronic database.

(iii) *Resolution concerning decent work in global supply chains*

The resolution with accompanying conclusions of the 105th Session of the International Labour Conference (2016) concerning decent work in global supply chains[523] recognized that supply chains have contributed to economic growth, job creation, poverty reduction and entrepreneurship and can contribute to a transition from the informal to the formal economy. They can be an engine of development by promoting technology transfer, adopting new production practices and moving into higher value-added activities, which would enhance skills development, productivity and competitiveness. The Conference noted the important positive impact of supply chains on job creation in view of demographic changes in terms of aging, population growth and the increase of women's participation in the labour market. The conclusions further indicated that failures at all levels within global supply chains have contributed to decent work deficits in the areas of occupational safety and health, wages, working time, and which impact on the employment relationship and the protections it can offer. Such failures have also contributed to the undermining of labour rights, particularly freedom of association and collective bargaining. Informality, non-standard forms of employment and the use of intermediaries are common. The presence of child labour and forced labour in some lower segments of some global supply chains is acute. Migrant workers and homeworkers are found in many global supply chains and may face various forms of discrimination and limited or no legal protection. In many sectors, women represent a large share of the supply chain workforce, disproportionately represented in low-wage jobs in the lower tiers; they are too often subject to discrimination, sexual harassment and other forms of workplace violence. The conclusions further stated that governments may have limited capacity and resources to effectively monitor and enforce compliance with laws and regulations. The expansion of global supply chains across borders has exacerbated these governance gaps. Therefore, the conclusions call upon the International Labour Organization (ILO) to develop a programme of action to address decent work in global supply chains through a comprehensive and coordinated framework (the programme) for the consideration of the Governing Body.

(iv) *Resolution on advancing social justice through decent work*

The Conference evaluated the impact of the ILO Declaration on Social Justice for a Fair Globalization, adopted in 2008, ("Social Justice Declaration") and adopted a resolution on advancing social justice through decent work.[524] The resolution reaffirms the ILO tripartite endorsement of the Social Justice Declaration and the four strategic objectives of

[523] Resolution concerning decent work in global supply chains, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_497555.pdf.

[524] Resolution on Advancing Social Justice through Decent Work, available at http://www.ilo.org/ilc/ILCSessions/105/texts-adopted/WCMS_497583/lang--en/.

the Decent Work Agenda—employment, social protection, social dialogue and tripartism, and fundamental principles and rights at work. The resolution underscores the critical importance of advancing an integrated approach to decent work by playing a full and more active role in the framework of the 2030 Agenda, better equipping the ILO for its second century in pursuit of the Centenary Initiatives and encouraging Members' endeavours to achieve the full potential of the Social Justice Declaration.

The resolution calls on ILO member States to advance decent work in the framework of the implementation of the 2030 Agenda, in particular by integrating decent work into national sustainable development strategies, and promote policy coherence. It further calls upon the ILO to make the best use of all its means of action to effectively assist its Members in six areas: (i) standards system; (ii) recurrent discussions; (iii) strengthening the results-based framework and Decent Work Country Programmes (DWCP); (iv) institutional capacity building; (v) research, information collection and sharing; and (vi) partnerships and policy coherence for decent work.

(v) *Resolution on the implementation of the Seafarers' Identity Documents Convention (Revised), 2003, and entry into force of the proposed amendments to its annexes, including transitional measures*

In the resolution on the implementation of the Seafarers' Identity Documents Convention (Revised), 2003, and entry into force of the proposed amendments to its annexes, including transitional measures,[525] the International Labour Conference noted the need to give Members sufficient time to make any necessary revisions of their national seafarers' identity documents and procedures to implement the amendments. The Conference decided that the amendments would enter into force one year after their adoption and established a transitional period for the Members whose ratification of the Convention had been registered prior to the entry into force of the amendments. It considered that the entry into force of the amendments or the expiry of the transitional period should not affect the validity of any seafarers' identity documents issued under the prior provisions and recommended effective cooperation between all relevant authorities. The Conference also requested the International Labour Office to draw the attention of all relevant actors to the need to eliminate any existing barriers to the effective use of the seafarers' identity documents.

(vi) *Resolution on the facilitation of access to shore leave and transit of seafarers*

In the resolution on the facilitation of access to shore leave and transit of seafarers,[526] the International Labour Conference expressed concern at the difficulties that seafarers continue to experience in being able to enjoy shore leave and to transit to and from ships. The Conference called for the harmonization of formalities and other procedures

[525] Resolution on the implementation of the Seafarers' Identity Documents Convention (Revised), 2003, and entry into force of the proposed amendments to its Annexes, including transitional measures, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_497584.pdf.

[526] Resolution on the facilitation of access to shore leave and transit of seafarers, available at http://www.ilo.org/ilc/ILCSessions/105/texts-adopted/WCMS_497585/lang--en/.

facilitating access to shore leave and welfare facilities in ports and the transit of seafarers to and from ships. It also called upon countries to implement measures to facilitate the transit of seafarers to and from their ships and shore leave, and called upon the ILO Governing Body to request the Director-General to remain seized of this issue, including through engagement with other United Nations specialized agencies.

(vii) *Resolution concerning the Statute of the Administrative Tribunal of the International Labour Organization*

At its 105th Session (June 2016), the International Labour Conference adopted amendments to the Statute of the ILO Administrative Tribunal.[527] Those amendments were the subject of consultations among the 60 international organizations having recognized the Tribunal's jurisdiction and were approved by the ILO Governing Body at its 326th Session (March 2016).

Most importantly, article XII of the Statute and article XII of its annex—which enabled only the defendant organizations to challenge a decision of the Tribunal before the International Court of Justice—have now been removed. These provisions had been criticized as being contrary to the principles of equality of access to justice and equality of arms, last in the context of the International Court of Justice's advisory opinion of 2012 concerning Judgment No. 2867 of the ILO Administrative Tribunal.[528] A similar provision had been deleted from the Statute of the former United Nations Administrative Tribunal in 1995.

The other substantive amendment concerns article VI of the Statute which now includes an express reference to the possibility for filing applications for interpretation, execution or review of judgments. In addition, the long-standing practice according to which the Tribunal is duly consulted prior to the adoption of any amendments to the Statute is now expressly reflected in its article XI.

(*b*) The Standards Review Mechanism Tripartite Working Group

The Standards Review Mechanism (SRM) is an in-built mechanism of the ILO standards policy, established by the Governing Body in 2011. It is part of a series of actions taken by the ILO to ensure that it has a clear, robust and up-to-date body of international labour standards serving as a global reference. The SRM operates through a working group composed of representatives of the ILO tripartite constituents. The mandate of the SRM Tripartite Working Group is to undertake a review of international labour standards and to make recommendations to the Governing Body on the status of the standards examined, the identification of gaps in coverage, including those requiring new standard and practical and time-bound action as appropriate.

The SRM Tripartite Working Group held its first meeting in February 2016 and adopted its initial programme of work which currently comprises the review of 235 international labour conventions and recommendations. At its second meeting in October 2016, the

[527] Resolution concerning the Statute of the Administrative Tribunal of the International Labour Organization, available at http://www.ilo.org/ilc/ILCSessions/105/texts-adopted/WCMS_497592/lang--en/.

[528] 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), available at http://www.icj-cij.org/en/case/146.

SRM Tripartite Working Group determined the follow-up to be taken to the 63 instruments (36 conventions and 27 recommendations) which had been previously identified as outdated. In November 2016, the ILO Governing Body, on the basis of the recommendations of the SRM TWG,[529] took a number of decisions. In particular, it decided to place an item on the agenda of the 107th Session (2018) of the International Labour Conference on the abrogation of six international labour conventions and the withdrawal of three recommendations.[530] It also decided that the International Labour Office should commence a strategic follow-up in relation to the 30 outdated Conventions including (i) a targeted ratification campaign concerning the related up to date instruments; (ii) the gathering of relevant information on the reasons for non-ratification of up-to-date instruments; and (iii) tailored technical assistance to member States designed to support implementation at the national level of the SRM Tripartite Working Group's recommendations.

(*c*) Guidance documents submitted to the Governing Body of the International Labour Office

(i) *Guidelines on flag State inspection of working and living conditions on board fishing vessels*

At its 326th Session (March 2016), the Governing Body of the ILO authorized the publication of the Guidelines on flag State inspection of working and living conditions on board fishing vessels, adopted by a tripartite meeting of experts in September 2015.[531]

The Guidelines aim to assist States in effectively exercising their jurisdiction and control over vessels that fly their flag by establishing a system for ensuring compliance with national laws, regulations and other measures through which the Work in Fishing Convention, 2007 (No. 188) is implemented. Convention No. 188 requires States to have, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations. The Guidelines include chapters on the key concepts and contents of the Convention, on flag State inspection systems for the fishing sector, on specific issues to be addressed during on-board inspection of working and living conditions on fishing vessels (including requirements of the Convention to be implemented through national laws, regulations or other measures; indicative sources of information for inspectors; interviewing fishers; and examples of deficiencies) and on actions to be taken if deficiencies are identified. They also provide guidance on coordination, where appropriate, with enforcement measures related to violations of fundamental principles and rights at work, such as use of forced labour.

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[529] The Standards Initiative: Report of the second meeting of the Standards Review Mechanism Tripartite Working Group, ILO Doc. GB.328/LILS/2/1, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_534130.pdf.

[530] Dec-GB.328/INS/3(Add.) and dec-GB.328/LILS/2/1.

[531] GB.326/PV, para. 410(*b*). The text of the Guidelines on flag State inspection of working and living conditions on board fishing vessels is available at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/normativeinstrument/wcms_428592.pdf.

(ii) *General principles and operational guidelines for fair recruitment*

At its 328th Session (October 2016), the Governing Body of the ILO authorized the publication of the general principles and operational guidelines for fair recruitment, adopted by the Meeting of Experts on fair recruitment in September 2016.[532]

The principles and guidelines are intended to cover the recruitment of all workers, including migrant workers, whether directly by employers or through intermediaries. They apply to recruitment within or across national borders, as well as to recruitment through temporary work agencies, and cover all sectors of the economy. The general principles are intended to orient implementation at all levels and operational guidelines address responsibilities of specific actors in the recruitment process and include possible interventions and policy tools.

The development of the principles and guidelines was recognized in the ILO's Fair Migration Agenda (2014) as a key component for the protection of migrant workers and the fair and effective governance of labour migration, and supports the ILO's Fair Recruitment Initiative. Addressing abusive and fraudulent recruitment practices is increasingly being recognized by the international community as an important element in reducing labour migration costs and thus improving development outcomes for migrant workers and their families. It is also an integral part of the 2030 Agenda for Sustainable Development, specifically recognized as an indicator to measure progress on the target on migration and mobility in Sustainable Development Goal (SDG) 10 on reducing inequality within and among countries. The principles and guidelines also provide further guidance on the relevant measures foreseen under the Protocol of 2014 to the Forced Labour Convention, 1930, and its accompanying Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).

(iii) *Guiding principles on the access of refugees and other forcibly displaced persons to the labour market*

At its 328th Session (October 2016), the Governing Body of the ILO authorized the publication of the Guiding Principles on the Access of Refugees and other Forcibly Displaced Persons to the Labour Market, adopted by the Tripartite Technical Meeting on the Access of Refugees and Other Forcibly Displaced Persons to the Labour Market in July 2016.[533]

The Guiding Principles are addressed to all ILO member States and employers' and workers' organizations as a basis for the formulation of policy responses and national tripartite dialogue on the access of refugees and other forcibly displaced persons to the labour market. They provide a comprehensive intervention framework for a job-rich and inclusive ILO approach that engages all areas of its decent work mandate, experience and expertise.

The development of the guiding principles underscores the increasing focus on access to decent work as part of sustainable solutions to refugee movements and the changing nexus

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[532] GB.328/PV, para. 345. The text of the General principles and operational guidelines for fair recruitment is included in GB.328/INS/17/4, Appendix, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_532389.pdf.

[533] GB.328/PV, para. 334. The text of the Guiding principles on the access of refugees and other forcibly displaced persons to the labour market is included in GB.328/INS/17/3(Rev.), Appendix I, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_531687.pdf.

between humanitarian and development action. This change in refugee response is embodied in the Annexes of the New York Declaration for Refugees and Migrants[534] which outline the Comprehensive Refugee Response Framework and the development of a Global Compact for Refugees. Among principal solutions for refugees is that of accessing decent work and related labour market opportunities, including skills development, recognition and accreditation. This framework will underpin ILO's renewed Memorandum of Understanding (MOU) with the United Nations High Commissioner for Refugees (UNHCR) and, in particular, the operationalization of its accompanying joint plan of action.

(*d*) Joint Maritime Commission's Subcommittee on Wages of Seafarers

The Subcommittee met in Geneva from 6 to 7 April 2016 in accordance with a decision taken by the Governing Body at its 323rd Session (March 2015) to discuss updating the minimum monthly basic pay or wage figure for able seafarers referred to in the Maritime Labour Convention, 2006 (Guideline B2.2.4). The Subcommittee adopted a resolution noting that there was no agreement to increase the ILO minimum monthly basic wage figure for an able seafarer and that the current figure of US$614 will prevail while acknowledging that the agreed minimum monthly basic wage figure in no way prejudices collective bargaining or the adoption of higher levels in other international wage-setting mechanisms. The Subcommittee invited the Governing Body to convene a meeting of the Subcommittee in the first half of 2018 for the purpose of updating the minimum monthly basic wage figure to take effect as of 1 January 2019 and every two years thereafter.[535]

(*e*) Legal advisory services and training

With respect to international labour standards, in 2016, the ILO provided technical assistance in reporting and other international labour standards related obligations, including capacity building, assistance with implementation and reform of national legislation, to nearly 49 countries. Assistance included training on the content of selected international labour standards; research to generate information on the status of implementation of international labour standards, including legislative gap analyses; advice on elements that would enable tripartite constituents to take the relevant decisions aiming at full implementation; legal advice on the revision or drafting of legislation and regulations in the light of the supervisory bodies' comments; and strengthening the data collection and reporting capacity of tripartite constituents. The ILO also organized legal training courses at the interregional, regional, sub regional and national levels in collaboration with its International Training Centre in Turin.

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[534] A/RES/71/1 of 19 September 2016.

[535] Final report: Updating of the minimum monthly basic pay or wage figure for able seafarers: Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187); Maritime Labour Convention, 2006, Guideline B2.2.4—Minimum monthly basic pay or wage figure for able seafarers, SWJMC/2016/7, available at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_534027.pdf.

(*f*) Committee on Freedom of Association

In 2016, the Committee on Freedom of Association had before it more than 193 cases concerning 60 countries from all parts of the world, for which it presented interim or final conclusions, or for which the examination was adjourned pending the arrival of information from governments (377th, 378th and 379th reports). Many of these cases had been before the Committee on Freedom of Association on more than one occasion. Moreover, seven new cases have been submitted to it since the last meeting of the Committee of Experts. The Committee on Freedom of Association has drawn the attention of the Committee of Experts to the legislative aspects of Cases Nos 2723 (Fiji), 2947 (Spain), 2964 (Pakistan), 3053 (Chile), 3064 (Cambodia), 3111 (Poland), 3118 (Australia), 3128 (Zimbabwe) and 3136 (El Salvador).

(*g*) Representations submitted under article 24 of the ILO Constitution and complaints made under article 26 of the ILO Constitution

In 2016, the Governing Body considered the developments in 18 representations submitted under article 24 of the ILO Constitution by industrial associations of employers or workers, alleging that a member State that has ratified a Convention has failed to secure within its jurisdiction the effective observance of that Convention.

The Governing Body also considered the developments in five complaints (Chile, Fiji, Guatemala, Qatar and the Bolivarian Republic of Venezuela) made under article 26 of the Constitution, alleging that a member State that has ratified a Convention is not securing its effective observance.

2. Food and Agriculture Organization of the United Nations[536]

(*a*) Membership

As of 31 December 2016, the membership of the Food and Agricultural Organization of the United Nations (FAO) remained unchanged at 194 members, two associate members and one member organization.

(*b*) Constitutional and general legal matters

(i) *Committee on Constitutional and Legal Matters (CCLM)*

The Committee on Constitutional and Legal Matters (CCLM) is a Governing Body of the FAO, established by paragraph 6 of article V of the FAO Constitution.[537] During 2016, the FAO Legal Office supported the 102nd and 103rd sessions of the CCLM held in Rome from 14 to 16 March and 24 to 26 October, respectively. During the two sessions, the CCLM reviewed a number of substantive constitutional matters and draft resolutions.

[536] For official documents and more information on the Food and Agriculture Organization of the United Nations, see http://www.fao.org.

[537] FAO Constitution, Basic Texts of the Food and Agriculture Organization of the United Nations (FAO Basic Texts), 2013, vol. I, section A. See also Rule XXXIV of the General Rules of the Organization, FAO Basic Texts, 2013, vol. I, section B.

These included the review of proposed amendments to treaties adopted under the framework of article XIV of the FAO Constitution, matters relating to the relationship of such treaty bodies with the Organization, and the filing and recording of the FAO Constitution under Article 102 of the Charter of the United Nations.

(*c*) Treaties concluded under the auspices of the FAO

As of 31 December 2016, a number of treaties have been adopted under the auspices of the FAO.[538]

Seventeen multilateral treaties concluded on the basis of article XIV of the FAO Constitution. These treaties are adopted by the Conference or the Council and submitted to the Member Nations for acceptance. The bodies established by these treaties are FAO Statutory Bodies.[539]

Nineteen multilateral treaties concluded outside the framework of the FAO, in respect of which the FAO Director-General exercises depositary functions.[540]

In 2016, no new treaties were adopted under the auspices of the FAO. A number of depositary actions concerning treaties deposited with the Director-General were recorded. The status of multilateral treaties adopted pursuant to article XIV of the FAO Constitution or outside of the FAO's framework and deposited with the Director-General of the FAO is available on the FAO's website.[541]

(i) *Entry into force of treaties*

The Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) was approved by the FAO Conference at its thirty-sixth session (Rome, 18 to 23 November 2009) under article XIV of the FAO Constitution. In accordance with its article 29, the Agreement entered into force on 6 May 2016, thirty days after the date of deposit of the twenty-fifth instrument of ratification, acceptance, approval or accession with the Director-General of the FAO.[542]

The PSMA is the first international treaty designed to combat illegal, unreported and unregulated ("IUU") fishing through the implementation of port state measures as a means of ensuring the long-term conservation and sustainable use of living marine resources and marine ecosystems. The PSMA sets out minimum standards for port control of foreign fishing vessels and explicitly provides that the rights, jurisdiction and duties of parties under international law are not prejudiced. Parties, therefore, have the discretion

[538] This does not include treaties that are no longer in force, the FAO Constitution, and bilateral agreements adopted under Article 15 of the International Treaty on Plant Genetic Resources for Food and Agriculture.

[539] http://www.fao.org/treaties/results/en/?search=adv&subj_coll=ArticleXIV.

[540] http://www.fao.org/treaties/results/en/?search=adv&subj_coll=No_ArticleXIV.

[541] http://www.fao.org/treaties/en/.

[542] The status of participation in the Agreement is available on the following website: http://www.fao.org/fileadmin/user_upload/legal/docs/037s-e.pdf. The Agreement was registered with the Secretariat of the United Nations on 26 January 2017 under No. I-54133.

to apply more stringent measures than those set out in the PSMA for the use of ports in waters under their sovereignty. The PSMA also requires that its provisions be applied in a fair, transparent and non-discriminatory manner.

The PSMA establishes a step-by-step process for the port State to allow or deny the entry to and the use of its ports. Agreed criteria and documentary requirements for entry into and the use of ports are stipulated. In addition, a standard for the conduct of inspections in port, as well as the reporting of such inspections, is laid out. The PSMA provides for the establishment of mechanisms for the exchange of information between a port State and other States, regional fisheries management organizations and international organizations. Full recognition of the special requirements of developing States parties to implement the PSMA is enabled through, *inter alia*, the establishment of appropriate funding mechanisms and an *ad hoc* working group that is tasked to make recommendations to the parties on such mechanisms. The first Meeting of the Parties to the PSMA is to be convened in May 2017.

(ii) *Amendments to treaties*

The Commission for the Desert Locust in the Western Region (CLCPRO) is a Statutory Body established under article XIV of the FAO Constitution, with the objective of ensuring close collaboration for desert locust control in the "Western Region", encompassing West Africa and North-West Africa. The Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Western Region was approved by the FAO Council at its 119th Session (November 2000) and entered into force on 25 February 2002.[543] Proposals for amendments to the Agreement were presented at the 10th Session of the Executive Committee of the Commission, held from 18 to 20 May 2015 in Dakar, Senegal. Following a review of the proposed amendments by the CCLM, the FAO Council approved them by Council Resolution 1/154 at its 154th Session (May-June 2016). In accordance with article XVI of the Agreement, the amendments are to be considered for approval at an extraordinary session of the Commission, scheduled to take place in Bamako, Mali, from 3 to 6 July 2017, and shall enter into force on the date of their adoption by the Commission.[544]

The objective of the amendments to the Agreement is to "enable the Commission, in particular, to strengthen its capacity to react in case of locust outbreaks, which constitutes a major concern for the Members".[545] The amendments include a requirement that all members of the Commission establish an autonomous governmental body with the mandate of permanently monitoring, preventing and controlling the desert locust; a call for regional solidarity and cooperation among members of the Commission given the transboundary character of desert locust crises; reinforcement of the role of the Chairperson of the Commission in ensuring the follow up of recommendations of the Commission and its Executive Committee; and clarification of the role and functions of the Executive Secretary.

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[543] Resolution No. 1/119, FAO Council, Report of the 119th Session: http://www.fao.org/docrep/meeting/003/X8984e/X8984e01.htm#P415_45686.

[544] Report of the 154th Session of the FAO Council, 28 May to 3 June 2016, para. 21(*a*) and Resolution No. 1/154, adopted on 3 June 2016, Appendix C: http://www.fao.org/3/a-mq920e.pdf.

[545] Report of the 102nd session of the CCLM, available at the following website: http://www.fao.org/3/a-mq067e.pdf.

Moreover, taking advantage of the review of the Agreement which had not been previously amended, the definition of the region covered by the Agreement is modified,[546] in order to include Burkina Faso in the list of Members under article III of the Agreement.[547]

The Convention for the Lake Victoria Fisheries Organization (LVFO) was adopted on 30 June 1994 by a Conference of Plenipotentiaries. It is a treaty outside of the framework of the FAO, with the Director-General of the FAO acting as depositary of the Convention. Membership in the LVFO was initially open only to the riparian States of Lake Victoria. At its 9th Session held in Nairobi, Kenya, on 29 January 2016, the Council of Ministers of the Convention adopted amendments to the Convention with a view to, *inter alia*, opening up membership to all Partner States of the East African Community, and extending the competence of the LVFO to the fisheries and aquaculture resources of the East African Community water bodies. In accordance with article XXI of the Convention, the amendments entered into force on 28 February 2016, thirty days after their adoption.[548]

(*d*) Collaboration with other entities

(i) *Collaboration with other United Nations system entities*

Building on the publication of the "Legal Guide on Contract Farming" in 2015, collaboration between the International Institute for the Unification of Private Law, the International Fund for Agricultural Development and the FAO continued, with a focus on implementation of the Legal Guide. The FAO initiated the development of three supplementary documents: two briefs for farmers and regulators and a synthesis on legal aspects of contract farming agreements, drafted with a view to accessibility and minimizing the use of technical terms. The FAO also began work on a "Legislative Study on the Regulatory Frameworks for Contract Farming", aimed at guiding national regulators and policy makers on the conduct of assessments to determine whether and how to revise national regulatory frameworks to support contract farming.

In October 2016, the FAO and the Office of the High Commissioner for Human Rights co-organized a side event during the 43rd session of the Committee on World Food Security on "Human rights, food security and nutrition and small-scale fisheries". The event explored key entry points for, and good practices of, applying a human-rights based approach ("HRBA") in the implementation of the Voluntary Guidelines for securing sustainable small-scale fisheries in the context of food security and poverty eradication (SSF Guidelines).

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[546] Article III currently defines the Region covered by the Agreement as follows: "(…) *the western region of the invasion area of the desert locust (hereinafter "the Region") comprises Algeria, Chad, Libya, Mali, Morocco, Mauritania, Niger, Senegal and Tunisia* (…)".

[547] On 16 June 2005, Burkina Faso deposited an instrument of accession to the Agreement with the Director-General of the FAO and was accepted as a Member of the Commission in accordance with Article V(2) of the Agreement. Under Article V(2), the Commission may, by a majority of two-thirds of its Members, admit other Member Nations of FAO or other States belonging to the United Nations, to one of its Specialized Agencies or to the International Atomic Energy Agency having submitted an application to this effect and an instrument declaring acceptance of the Agreement as in force at the time of admission.

[548] The status of the Convention is available on the following website: http://www.fao.org/fileadmin/user_upload/legal/docs/027s-e.pdf.

During 2016, the FAO also contributed to the open-ended intergovernmental working group established by the Human Rights Council on the draft Declaration on the rights of peasants and other people working in rural areas. The FAO's contributions highlighted, in particular, the following binding and non-binding instruments developed under the auspices of the FAO: the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication, the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, and the International Treaty on Plant Genetic Resources for Food and Agriculture.

The FAO also collaborated with the International Labour Organization in research on the application of international labour standards in the agriculture, forestry and fisheries sectors, resulting in an FAO legal paper on the "Assessment of International Labour Standards that apply to rural employment", identifying key agricultural labour issues to be addressed in general and sector-specific legislation that apply to work in the agriculture, forestry, fisheries and aquaculture sectors.

(ii) *Collaboration in programme delivery and technical assistance*

Partnerships with public and non-public entities are essential for the achievement of the FAO's mandate and strategic objectives.[549] Increasingly, programme activities are implemented by partners to which the FAO allocates resources to enable programme delivery.

In 2016, the FAO introduced the Operational Partners Implementation Modality ("OPIM"), with a primary aim of reflecting the nature of these collaborations as partnerships, as distinct from the procurement of services from third parties. The OPIM also seeks to ensure that FAO-managed funds are used efficiently, for the intended purposes, and with minimum risks of fraud, corruption and mismanagement. In particular, it establishes a mechanism for collaboration with non-UN partners similar to the pass-through arrangements and instruments that already exist for collaboration between United Nations System entities. Implementation of programmatic activities are the responsibility of the Operational Partner and are subject to the Operational Partner's own regulations, rules, policies and procedures (including those relating to the administration of funds, auditing standards and procurement of goods, services and works), removing the usual obligation to apply the FAO's regulations, rules and procedures. The FAO retains overall accountability *vis-à-vis* Resource Partners and Recipient Governments for the proper management of funds, technical quality and results achieved.

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[549] See in this respect, the following strategies approved by the FAO Council regarding strategic partnerships:

[i] "FAO Organization-wide Strategy on Partnerships", available on the following website: http://www.fao.org/3/a-bp169e.pdf.

[ii] "FAO Strategy for Partnerships with the Private Sector", available on the following website: http://www.fao.org/docrep/meeting/028/mg311e.pdf.

[iii] "FAO Strategy for Partnerships with Civil Society Organizations", available on the following website: http://www.fao.org/docrep/meeting/027/MF999E.pdf.

Consequently, the FAO will only transfer funds to Operational Partners after an Operational Partner's Assessment. The Assessment addresses the potential Operational Partner's financial and procurement management capacity (accounting policies and procedures, internal controls, reporting and monitoring, information systems and procurement, etc). Based on the results of the Assessment, the Organization may propose measures to be implemented by the Operational Partner. Implementation of specific activities requires the conclusion of a legally binding instrument (the "Operational Partners Agreement") which outlines the FAO's and the Operational Partner's roles, responsibilities, mandatory reporting and audit requirements, funds transfer modalities and other conditions for collaboration. To address the different legal status and structures of the various types of Operational Partners, a number of Agreement templates have been developed.

"Operational Partners" include government entities, local or international non-governmental organizations, United Nations System and other intergovernmental/ multilateral institutions, academia and research institutions. Private and for-profit entities are not eligible as Operational Partners.

(*e*) Legislative matters

(i) *Legislative assistance and advice*

The Development Law Branch (LEGN) of the FAO Legal Office continued to discharge its mandate to provide legal advice and legislative assistance on sustainable agriculture and management of natural resources to the FAO Member Nations.

In 2016, LEGN provided legal support to Member Nations under the framework of 75 national projects and 29 multi-country, regional and global projects. These included:

- Support to seven countries on agribusiness, to six countries on organic agriculture, and to six regional projects with over 20 participating countries in the areas of food security, nutrition and school feeding;
- Legal assistance provided to 13 countries on animal health and production, to 25 countries on pesticides, and to a further 25 countries on food safety and phytosanitary protection;
- Legal advice provided to five countries on seeds and, on tenure, to 18 countries; support to seven country projects, as well as nine regional and global projects on fisheries and aquaculture, such as legal advice to strengthen laws and institutions to prevent, deter and eliminate Illegal, Unreported and Unregulated (IUU) fishing, including through the use of port State measures to *inter alia* Albania, Papua New Guinea, Saint Christopher and Nevis, Sierra Leone, and Thailand;
- Legal support to 11 national projects and three regional initiatives on forestry and wildlife, including the creation of a multi-stakeholder Legal Working Group (LWG) in Côte d'Ivoire to conduct a legislative review for the Forest Law Enforcement, Governance and Trade (FLEGT) initiative aimed at strengthening effective stakeholder participation in the legislative process.

LEGN also assisted in the drafting of legal instruments, the formulation of model laws, legislative reviews, and guidance on the establishment of implementation infrastructures and oversight mechanisms and the strengthening of institutional frameworks.

It developed a number of practical legal tools to assist the FAO Member Nations. Selected examples of the tools and guidance developed include:

– "Responsible Governance of Tenure and the Law: A guide for lawyers and other legal service providers", providing a practical guidance on the legal aspects of the "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" (CFS, 2012), which explores the legal value of the Guidelines, linkages with responsibilities of legal professionals in the private sector, and the use of the Guidelines in law-making, implementation of laws and the settlement of disputes;
– "Legal Assessment Tool (LAT) for gender-equitable land tenure", to support country-driven efforts to achieve responsible governance of land tenure by addressing a number of persisting challenges relating to *inter alia* the parallel systems of statutory law and customary law, gender equality in property and inheritance rights and women's representation in land institutions;
– "How-to Guide on legislating for an Ecosystem Approach to Fisheries (EAF)", to facilitate the implementation of EAF within national legal frameworks. The Guide identifies key components for legislating for EAF and the operationalization of these components into concrete steps for drafting legislation.

(ii) *Legislative research and publications*

The FAO continued to improve and expand the content and functionalities of FAOLEX, an online repository of national legislation and policies relating to the FAO mandates administered and maintained by LEGN.

(iii) *FAOLEX*

In 2016, the FAO launched a new FAOLEX website with a more intuitive interface, enhanced search functionality, as well as improved options for data-sharing and integration with external partners and databases.[550] Over 10,000 new entries of legislations, policies and international agreements were added to FAOLEX. Simultaneously, LEGN converted over 800,000 pages of historical legislative documents into digital format and plans to make them available in an Historical Database.

During 2016, the FAO also continued to update and add profiles of the legal framework and governance for aquaculture management of the FAO Members in the National Aquaculture Legislative Overview (NALO) database.[551] NALO aims to be an information portal for related laws and regulations to facilitate aquaculture development and market entries.

[550] The FAOLEX database is available at http://faolex.fao.org.

[551] The NALO database is available at http://www.fao.org/fishery/nalo/search/en.

3. United Nations Educational, Scientific and Cultural Organization[552]

(*a*) International regulations

(i) *Entry into force of instruments previously adopted*

In 2016, no multilateral conventions or agreements adopted under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO) entered into force.

(ii) *Proposals concerning the preparation of new instruments*

Draft declaration of ethical principles in relation to climate change

Pursuant to a resolution of the 38th session of the General Conference in 2015 (38 C/Resolution 42), during 2016, preparatory work was undertaken on the draft declaration of ethical principles in relation to Climate Change. The consideration of this draft is included in the provisional agenda of the 39th session of the General Conference (30 October to 14 November 2017).

(iii) *Proposals concerning the preparation of revised instruments*

Revision of the 1974 Recommendation on the Status of Scientific Researchers

During 2016, preparatory work was undertaken on the revision of the 1974 Recommendation on the Status of Scientific Researchers. The consideration of this draft is included in the provisional agenda of the 39th session of the General Conference (30 October to 14 November 2017).

(*b*) Human rights

Examination of cases and questions concerning the exercise of Human Rights comes within UNESCO's fields of competence.

The Committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 4 to 6 April 2016 and from 4 to 6 October 2016, in order to examine communications which had been transmitted to it in accordance with Decision 104 EX/3.3 of the Executive Board.

At its April 2016 session, the Committee examined 24 communications of which three were examined with a view to determining its admissibility or otherwise, 20 were examined as to their substance and one was examined for the first time. Ten communications were struck from the list because they were considered as having been settled. One communication was struck from the list because the alleged victim died during the examination of the case by the Committee. One communication was also struck from the list because it was considered as inadmissible. The examination of the other 12 communications was deferred. The Committee presented its report to the Executive Board at its 199th session.

[552] For official documents and more information on the United Nations Educational, Scientific and Cultural Organization, see https://www.unesco.org.

At its October 2016 session, the Committee examined 16 communications of which six were examined with a view to determining their admissibility, or otherwise, and 10 were examined as to their substance. Six communications were struck from the list because they were considered as having been settled. The examination of the other 10 communications was deferred. The Committee presented its report to the Executive Board at its 200th session.

4. International Monetary Fund[553]

(*a*) Membership issues

(i) *Accession to membership*

Nauru became a member of the International Monetary Fund (IMF) on 12 April 2016. As of 31 December 2016, the membership of the IMF consisted of 189 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, members of the IMF may not, without the IMF's approval, (i) impose restrictions on the making of payments and transfers for current international transactions; or (ii) engage in any discriminatory currency arrangements or multiple currency practices. Notwithstanding these provisions, pursuant to article XIV, section 2 of the IMF's Articles of Agreement, when a member joins the IMF, it may notify the IMF that it intends to avail itself of the transitional arrangements under article XIV of the IMF's Articles of Agreement that allow the member to maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Article XIV of the IMF's Articles of Agreement does not, however, permit a member, after it joins the IMF, to introduce new restrictions on the making of payments and transfers for current international transactions without the IMF's approval.

The total number of countries that have accepted the obligations of article VIII, sections 2, 3, and 4, as of 31 December 2016, was 170. Nineteen countries continued to avail themselves of the transitional arrangements under article XIV.

(iii) *Overdue financial obligations to the IMF*

As of 31 December 2016, members with protracted arrears (i.e., financial obligations that are overdue by six months or more) involving the general resources of the IMF were Somalia and Sudan. In addition, Somalia and Sudan had protracted overdue Trust IMF and/or Structural Adjustment Facility obligations not involving the general resources of the IMF.

Article XXVI, section 2(*a*) of the IMF's Articles of Agreement provides that if "a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund." Such declarations

[553] For documents and more information on the International Monetary Fund, see https://www.imf.org.

of ineligibility were in place at end of December 2016 with respect to Somalia and Sudan, whose arrears were subject to sanctions under article XXVI.

Zimbabwe, which had arrears since 2001 to the Poverty Reduction and Growth Trust (PRGT) administered by the IMF as Trustee, cleared those arrears on 20 October 2016. Following the full settlement of its overdue obligations to the PRGT, the Executive Board removed the remedial measures that had been in place: the Board fully lifted the suspension of technical assistance and reinstated Zimbabwe on the list of members eligible for PRGT financing.

(*b*) Key policy decisions of the IMF

In 2016, the IMF 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, as follows:

(i) *IMF Governance*

Quota Reform and All-Elected Executive Board

The amendment to the IMF's Articles of Agreement creating an all-elected Executive Board (Board Reform Amendment) entered into force on January 26, 2016. The entry into force of the Board Reform Amendment likewise fulfilled the final condition for the implementation of the IMF's 14th General Review of Quotas, which delivered historic and far-reaching changes to the governance and permanent capital of the Fund.

The Board Reform Amendment was part of a broader package of quota and governance reforms, which also included a doubling of IMF quotas under the 14th General Review of Quotas and a major shift in quota shares toward dynamic emerging market and developing countries. For the first time, four emerging market countries (Brazil, China, India, and Russia) were included among the 10 largest members of the IMF. The reforms also increased the financial strength of the IMF by doubling its permanent capital resources to Special Drawing Rights (SDR) 477 billion (about US$659 billion).

The entry into force of the Board Reform Amendment, which was approved by the Board of Governors in 2010, required the acceptance by three-fifths of the IMF's members representing 85 per cent of the total voting power. The entry into force was also a general condition for the effectiveness of quota increases under the 14th General Review of Quotas. With the entry into force of the Board Reform Amendment, and all other general effectiveness conditions having been met, members could then pay for their quota increases to make them effective.

The 2010 Quota and Governance reforms built on an earlier set of reforms that were approved by the Governors in April 2008.

For the first time, the Executive Board consists entirely of elected Executive Directors, ending the category of appointed Executive Directors (previously the members with the five largest quotas appointed an Executive Director). The 2010 package of reforms also increased the scope for appointing a second Alternate Executive Director to multi-country constituencies with seven or more members to enhance these constituencies' representation in the

Executive Board. As a result, 13 constituencies—including both African constituencies—are currently eligible to appoint an additional Alternate Executive Director.

Following the effectiveness of the 14th General Review of Quotas, the focus turned to work on the 15th General Review of Quotas and securing the necessary broad consensus, including on a new quota formula.

(ii) *IMF financing and financial assistance*

a. Review of access limits, surcharge policies, and other quota-related policies

On 17 February 2016, the Executive Board concluded a review of access limits, surcharge policies, and other quota-related policies. This review took place in response to the effectiveness of the quota increases under the 14th General Review of Quotas, which doubled members' quotas on average.

A number of Fund policies have thresholds set as a percentage of members' quotas. These include limits on members' normal access to Fund resources in the General Resources Account (GRA), thresholds for surcharges on high levels of outstanding Fund credit, and commitment fees. With quotas doubling on average and absent policy change, quota-based limits and thresholds would also have doubled in Special Drawing Rights (SDR) terms. This would have eroded critical elements of the Fund's risk management framework, as it would have doubled, on average, access to Fund resources in the GRA without triggering safeguards under the exceptional access framework and SDR amounts on which surcharges do not apply, reducing the incentives for timely repayments. At the same time, the Board saw the need to maintain access relative to economic developments and metrics since the last review of access, in 2009, which called for some increase in limits and thresholds in SDR terms.

To reflect these considerations and ensure that no member's access to GRA resources declined in SDR terms (even those with low quota increases), the Board decided to adjust annual and cumulative access limits to 145 and 435 per cent of new quota, respectively from 200 and 600 per cent, respectively, resulting in an average increase of 45 per cent in SDR terms. Also, specific access limits applicable to the Precautionary Liquidity Line (PLL) were halved to reflect the doubling of quotas on average.

The Board also decided to lower the threshold for level-based surcharges from 300 per cent of quota to 187.5 per cent. The Board also extended the trigger for time-based surcharges on credit outstanding under the Extended Fund Facility from 36 months to 51 months to better align this trigger with the repayment schedule under this facility.

Commitment fee thresholds were also lowered to reflect the doubling of quotas on average. With the new thresholds, a 15-basis points fee will be charged on committed amounts of up to 115 per cent (from 200 per cent) of quota over a 12-month period; 30 basis points will be charged on committed amounts between 115 per cent and 575 per cent (from 1,000 per cent) of quota; and 60 basis points will be charged on amounts exceeding 575 per cent of quota.

The Board further decided to adjust the quota-based threshold below which a member may be placed on an extended article IV consultation cycle from 200 per cent of quota to 145 per cent of quota, consistent with its decision on access limits.

To ensure no member is made worse off by the changes to access, level-based surcharge, and commitment fee policies, the Board approved a limited grandfathering for affected members.

b. Reforming the exceptional access framework

On 20 January 2016, the Executive Board approved changes to the exceptional access framework, which governs access above the IMF's normal access limits, to make it more calibrated to members' debt situations and contribute to the efficient resolution of sovereign debt crisis, while avoiding unnecessary costs for the members, creditors, and the financial system as a whole. These reforms were put forward in two previous papers, namely, a 2014 staff paper "The Fund's Lending Framework and Sovereign Debt—Preliminary Considerations" and a 2015 staff paper "The Fund's Lending Framework and Sovereign Debt—Further Considerations".

The IMF established a comprehensive exceptional access policy framework in 2002, under which, the IMF could only provide large-scale financing in capital account crisis if all of four criteria were met, one of which was as follows: that there is a "high probability" that the member country's debt is sustainable. With respect to the criterion on debt sustainability, if the high probability bar was met, the IMF could lend without requiring any debt operation. If, however, the bar was not met, a sufficiently deep debt restructuring was typically needed to restore debt sustainability with high probability before the IMF could lend. There was no middle ground between providing financing and requiring a deep debt reduction.

Accordingly, for members whose debt was "sustainable but not with high probability", the debt reduction operation could constitute an unnecessarily drastic measure. This underlying rigidity in the 2002 exceptional access framework was tested in 2010, in the context of the first IMF-supported program for Greece. Because the IMF did not assess Greece's debt to be sustainable with high probability, the framework required an upfront debt reduction. However, there were serious concerns at the time that this could lead to severe contagion both in the Eurozone and beyond. Thus, at the time, the IMF created a "systemic exemption" for cases in which debt was judged to be sustainable but not with high probability. In such cases, the exemption allowed large-scale financing to go ahead without a debt reduction operation if there was a high risk of systemic international spillovers.

The 2016 reform seeks to improve the previous framework in two important ways: First, it removes the systemic exemption because *inter alia* it did not prove reliable in mitigating contagion, it increased subordination risks for private creditors, and finally the exemption had the potential to aggravate "moral hazard" in the international financial system. Second, it gives the IMF appropriate flexibility to make its financing conditional on a broader range of debt operations, including the less disruptive option of a "debt reprofiling"—that is, a short extension of maturities falling due during the program, with normally no reduction in principal or coupons.

In particular, the reformed policy—like the old one—prescribes that when debt is clearly sustainable, the IMF will continue to use its catalytic role and provide financing support to the member without requiring any debt operation. When debt is clearly unsustainable, a prompt and definitive debt restructuring will continue to be required to restore debt sustainability with "high probability".

However, for countries where debt is assessed to be sustainable but not with a high probability, the new policy allows the IMF to approve exceptional access without requiring debt

reduction upfront, if the member also receives financing from other creditors (official or private) during the program. This financing should be on a scale and terms that (i) helps improve the member's debt sustainability prospects, without necessarily bringing debt sustainability with high probability at the outset; and (ii) provides sufficient safeguards for IMF resources.

The new policy does not automatically presume that a reprofiling or any other particular option would be implemented at the outset when debt is assessed to be sustainable but not with a high probability. Instead, the choice of the most appropriate option, from a range of options that could meet the two conditions noted above, would depend on the member's specific circumstances.

Where a reprofiling is undertaken, the scope of debt to be reprofiled would be determined on a case-by-case basis, recognizing that it would not be advisable to reprofile a particular category of debt if the costs for the member of doing so—including risks to domestic financial stability—outweighed the potential benefits.

The new policy also allows the IMF to deal with rare "tail-event" cases where even a reprofiling is considered untenable because of contagion risks so severe that they cannot be managed with normal defensive policy measures. In these rare cases, the IMF could still provide large-scale financing without a debt operation, but would require that its official partners also provide financing on terms sufficiently favorable to backstop debt sustainability and safeguard IMF resources.

The reformed policy also addressed the third, or "market access", criterion. The Board confirmed that the third criterion, which requires a member to have prospects for gaining/regaining market access, remains binding even when there are open-ended commitments of official support for the post-program period. It also clarified that the timeframe within which a member is expected to gain/regain market access has to be consistent with the start of repayment of its obligations to the IMF, not just when the last repayment installment is due, as could have been implied by the old formulation of the criterion.

c. Enhancing financial assistance for low income countries

On 16 November 2016, the Executive Board discussed a staff paper on "Financing for Development: Enhancing the Financial Safety Net for Developing Countries—Further Considerations." The paper provided clarification to some issues concerning how low-income members eligible for IMF concessional support under the PRGT access IMF resources. The Board reaffirmed the long-standing rule that all members of the IMF, including low-income members are eligible to seek support from the general resources of the Fund. Executive Directors also noted that, given the financial benefits to the member from borrowing on concessional terms, staff should continue to advise PRGT-eligible members considering Fund financial support to seek support from the PRGT to the extent possible.

The Board further clarified the legal rules that apply to the blending of PRGT resources and the general resources of the Fund. There is a presumption that the better-off PRGT-eligible members (based on per capita income and access to international markets) will not use IMF concessional resources exclusively. The Board clarified that the PRGT-eligible members to which this presumption does not apply, are however not precluded from seeking non-concessional support under the general resources. In all cases, Fund staff will encourage members to borrow on the most favorable terms available to the member, without precluding the member from exercising its membership rights as it chooses, if applicable requirements are met.

(iii) *Financial issues*

a. Chinese Renminbi Added to SDR Basket of Currencies

On 1 October 2016, the Chinese renminbi (RMB) became a fifth currency in the IMF's Special Drawing Right (SDR) currency basket.

This followed the decisions by the Board taken on 30 November 2015, that effective on 1 October 2016, the RMB was determined to be a freely usable currency as defined under article XXX of the IMF's Articles of Agreement and that it met the criteria for inclusion in the SDR basket, along with the U.S. dollar, the euro, the Japanese yen, and the British pound. The addition of the Chinese currency to the basket was the first time since the adoption of the euro that a currency was added to the basket. The Board also decided at that time that the weights of each currency would be 41.73 per cent for the U.S. dollar, 30.93 per cent for the euro, 10.92 per cent for the Chinese yuan, 8.33 per cent for the Japanese yen, and 8.09 per cent for the Pound sterling.

The Board has broad authority under the IMF's Articles of Agreement to determine the SDR valuation methodology, which includes the criteria for selecting currencies for inclusion in the SDR currency basket, the weights of the selected currencies, and the periodicity for reviewing the basket. The current currency selection criteria require that the value of the SDR be determined on the basis of the five currencies issued by IMF members whose exports of goods, services, and income credits have the largest value during the five-year period and which have been determined by the IMF to be freely usable currencies. Under the current valuation method, the SDR currency basket is reviewed every five years unless developments in the interim justify an earlier review. The next review of the method of valuation of the SDR is expected to take place by 30 September 2021, unless an earlier review is warranted.

b. Renewal of New Arrangements to Borrow

The Executive Board approved on 4 November 2016 the renewal of the New Arrangements to Borrow (NAB) for a five-year period starting 17 November 2017.

The NAB are credit arrangements between the IMF and a large group of IMF members and institutions to provide supplementary resources of up to SDR 181 billion (about US$250 billion) to the IMF to forestall or cope with an impairment of the international monetary system or to deal with an exceptional situation that poses a threat to the stability of that system. It was established in November 1998, and has been renewed continuously since then, with the current five-year NAB period ending on 16 November 2017.

The NAB serves as the key backstop to the Fund's quota resources, and together with the IMF's bilateral borrowing resources, helps to assure members and markets that the IMF has adequate resources to meet its members' financial needs. The NAB must be activated before NAB resources can be used. As the last activation of the NAB ended on 25 February 2016, NAB resources are not currently used to finance the IMF's financing commitments to its members made after 25 February 2016.

c. Review of developments in sovereign debt restructuring

Twenty five (25) members of the IMF committed a total of SDR 243 billion (US$340 billion) in bilateral borrowed resources with maximum terms through end-2020.

In August 2016, the Executive Board approved a new bilateral borrowing framework to replace a similar framework agreed in 2012 when, in response to the global financial crisis, the membership decided to supplement IMF resources through bilateral borrowing agreements. Under the 2012 framework, 35 IMF members and institutions provided the Fund with a total amount of bilateral borrowing resources of SDR 282 billion or US$393 billion. These 2012 agreements, which began to expire on 12 October, had never been activated and thus never drawn, but played a critical role as a third line of defense, after quotas and the NAB, in providing assurance to members and markets that the IMF had adequate resources to meet potential needs.

In light of the ongoing uncertainty and structural shifts in the global economy, the Board approved the 2016 bilateral borrowing framework to allow the IMF to maintain access on a temporary basis to bilateral borrowing and avoid a sharp fall in its lending capacity.

The 2016 bilateral borrowing framework retains key modalities of the 2012 framework and includes a new multilateral voting structure that gives creditors a formal say in any future activation of the bilateral borrowing agreements, which is a pre-condition for the IMF's use of bilateral borrowing resources. The new agreements will have a common maximum term of end-2020, with an initial term to end-2019 extendable for a further year with creditors' consents. The agreements under the 2016 bilateral borrowing framework will continue to serve as a third line of defense after quotas and the NAB.

As of 30 April 2017, 35 member countries have committed a total of about SDR300 billion or $400 billion in bilateral borrowed resources under the 2016 framework.

(iv) *IMF surveillance*

Principles for Evenhanded Fund Surveillance and a New Mechanism for Reporting Concerns

On 22 February 2016, the Executive Board agreed to move forward with a framework to help ensure the evenhandedness of IMF surveillance. The framework responds to recommendations from the 2014 Triennial Surveillance Review (TSR) and has two key elements. First, it articulates principles of what it means to be evenhanded. Second, it establishes a mechanism for reporting and assessing specific concerns about lack of evenhandedness in surveillance.

The evenhandedness of IMF analysis and advice is critical to the institution's credibility and the effectiveness of its engagement with member countries. The TSR examined the issue in detail, including through an external study. While it did not find a systematic lack of evenhandedness, it identified instances where differences in surveillance across countries were not all well justified by country circumstances. The TSR also confirmed the continuation of long-standing perceptions that the Fund is not evenhanded. The new framework aims to address both perceptions and instances of lack of evenhandedness transparently, while safeguarding the independence and candor of staff advice.

Directors agreed on the importance of having a clearer and shared understanding of what it means to be evenhanded in surveillance, as lack of clarity on this definition has been an obstacle to addressing issues related to evenhandedness. Therefore, the Fund has adopted principles of evenhandedness focusing on a new "input-based" approach. In this regard, the surveillance inputs (e.g., resources, approach) and outcomes (i.e., policy advice) should both be well-founded and free from bias, consistent with the Fund's principle of "uniformity of treatment."

These principles inform how staff thinks about evenhandedness as well as the approach and presentation of surveillance. Evenhandedness does not imply a "one size fits all approach"; in fact, surveillance should be tailored to country circumstances. For instance, judgments about surveillance inputs would normally reflect domestic and/or systemic risks (i.e., they should be appropriately risk-adjusted) and be tailored to country circumstances. This could include choices about the (i) focus of resources; (ii) depth of risk and spillovers analysis; (iii) analytical approaches and tools; (iv) selection of policy themes; and (v) approach to contentious issues.

Directors also supported the establishment of a mechanism to report concerns about lack of evenhandedness, while underscoring the importance of preserving the independence and candor of staff advice. This mechanism entails a channel for Executive Directors to report concerns regarding evenhandedness in the Fund's surveillance activities, which will then be examined by a standing Committee comprised of senior staff acting in their personal capacity. The Committee will assess concerns against the backdrop of the principles described above, taking into account comparator cases. The Committee's findings will be reported back to the Director concerned, along with Management's forward-looking recommendations, if applicable. The Executive Board will be kept abreast of developments through periodic communications as well as an annual report.

5. International Maritime Organization[554]

(*a*) Membership

As at 31 December 2016, the membership of the International Maritime Organization (IMO) stood at 172.

(*b*) Review of the legal activities

(i) *Supporting ratification and implementation of 2010 HNS Convention*

The Legal Committee, at its 103rd session in June 2016,[555] agreed on the urgent need for the ratification and national implementation 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).

[554] For official documents and more information on the International Maritime Organization, see https://www.imo.org.

[555] The report of the 103rd session of the Legal Committee is contained in document LEG 103/14.

To support the ratification and entry into force of the treaty, the Committee extended the Correspondence Group to develop a HNS Scenarios presentation, in order to present several scenarios of different types of HNS incidents with the damage that could occur. The presentation would also highlight the benefits the Convention will bring by creating a safety net for States.

The Correspondence Group was also tasked with reviewing a proposed draft resolution on implementation and entry into force of the 2010 HNS Protocol and a programme for a possible future workshop to be considered at LEG 104.

Together with the International Oil Pollution Compensation Funds (IOPC Funds) and the International Tanker Owners Pollution Federation (ITOPF), IMO has produced a six page brochure that explains the benefits of the Convention and encourages the next steps for States to implement and accede to the Convention.

(ii) *Moving forwards with delegation for issuing of certificates under CLC and HNS*

The Committee also agreed to move forward with allowing the delegation of authority to issue certificates in relation to the International Convention on Civil Liability for Oil Pollution Damage, 1992 (the 1992 Civil Liability Convention) and 2010 HNS Convention.

Unlike the Bunkers Convention, the 2002 Athens Convention and the Nairobi Wreck Removal Convention, the 1992 Civil Liability Convention and 2010 HNS Convention do not provide an explicit framework for the delegation of authority to issue certificates of insurance.

A correspondence group was established to develop an Assembly resolution allowing to delegate the authority to issue insurance certificates under the CLC and the HNS Convention. The resolution should ensure certainty in respect of the interpretation of these two instruments and provide the clarity requested by States parties.

(iii) *Fair treatment of seafarers—guidance and workshops welcomed*

The Committee, also at its 103rd session, welcomed the work of the International Transport Workers' Federation (ITF) to develop guidance on the implementation of the Guidelines on fair treatment of seafarers in the event of a maritime accident and to organize regional or national workshops to discuss and refine the guidance, to make it useful for as many States as possible.

(iv) *Electronic certificates implementation urged*

Following consideration of recommendations to reduce administrative burdens, the Legal Committee urged States parties to expedite the implementation of electronic certificates under CLC 1969, CLC 1992 and the 2001 Bunkers Convention.

Meanwhile, insurance certificates under the 2002 Athens Convention, the 2007 Nairobi Wreck Removal Convention and the 2010 HNS Convention will be included into the list of certificates and documents required to be carried on board ships.[556]

[556] Certificates to be carried on board ships are listed in IMO Document FAL.2/Circ.127; MEPC.1/Circ.817; MSC.1/Circ.1462.

(v) *Cyber security—interim guidelines*

The Maritime Safety Committee (MSC), at its 96th session, approved interim guidelines on maritime cyber risk management, aimed at enabling stakeholders to take the necessary steps to safeguard shipping from current and emerging threats and vulnerabilities related to digitization, integration and automation of processes and systems in shipping.

The interim guidelines are intended to provide high-level recommendations for maritime cyber risk management, which refers to a measure of the extent to which a technology asset is threatened by a potential circumstance or event, which may result in shipping-related operational, safety or security failures as a consequence of information or systems being corrupted, lost or compromised. The guidelines include background information, functional elements and best practices for effective cyber risk management.

(vi) *Guidance for developing national maritime security legislation*

The MSC, at its 96th session, also approved Guidance for the development of national maritime security legislation. The guidance aims to assist SOLAS contracting governments with developing national legislation to fully implement the provisions of SOLAS chapter XI-2 on Special measures to enhance maritime security and the International Ship and Port Facility Security (ISPS) Code.

(vii) *Review of the 1995 STCW-F Convention*

At the same session, the MSC approved principles and scope for the review of the 1995 International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995, which entered into force in 2012.

(viii) *Interim Recommendations on the safe carriage of industrial personnel*

The MSC, at its 97th session, adopted Interim Recommendations on the safe carriage of more than 12 industrial personnel on board vessels engaged on international voyages.

Governments are invited to apply the Interim Recommendations, pending the planned development of the new chapter of SOLAS and the draft new code addressing the carriage of more than 12 industrial personnel on board vessels engaged on international voyages. The new SOLAS chapter and code will be developed under coordination by the Sub Committee on Ship Design and Construction (SDC).

The Interim Recommendations are aimed at addressing the safe and efficient transfer of technicians at sea, such as those working in the growing offshore alternative energy sector.

The Interim Recommendations define industrial personnel as all persons who are transported or accommodated on board for the purpose of offshore industrial activities performed on board other vessels and/or other offshore facilities and says they should not be considered as passengers within the meaning of SOLAS regulation I/2(*e*). Safety training and familiarization with safety procedures should be delivered to these personnel.

Offshore industrial activities covered by the Interim Recommendations would include the construction, maintenance, operation or servicing of offshore facilities related,

but not limited, to exploration, the renewable or hydrocarbon energy sectors, aquaculture, ocean mining or similar activities.

(ix) *Interim Recommendations for carriage of liquefied hydrogen in bulk*

The MSC also adopted Interim Recommendations for carriage of liquefied hydrogen in bulk, which have been developed as the International Gas Carrier (IGC) Code does not specify requirements for the carriage of liquefied hydrogen in bulk.

The Interim Recommendations are based on the results of a comparison study of similar cargoes listed in the IGC Code, *e.g.* liquefied natural gas and are intended to facilitate the establishment of a tripartite agreement for a pilot ship that will be developed for the research and demonstration of safe long-distance overseas carriage of liquefied hydrogen in bulk.

The Interim Recommendations contain general requirements and special requirements for the carriage of liquefied hydrogen in bulk by ship, such as the provision of portable hydrogen detector for each crew member working in the cargo area; selection of fire detectors for detecting hydrogen fire; and appropriate safety measures to prevent formation of an explosive mixture in the case of a leakage of hydrogen.

(x) *Goal-based standards*

The MSC further developed proposed amendments to revise and update the goal-based standards (GBS) Verification Guidelines, based on the experience gained during the initial verification audits. The revisions, to be considered at the 98th session in 2017, include additional and revised paragraphs relating to issues such as the insertion of an application date for any revised version of the Guidelines or submitting corrective action plans to address any findings reported by the GBS Audit Teams. Guidelines on common submissions by groups of submitters and the inclusion of an ongoing review of the rules are also proposed to be included. A revised timetable and schedule of activities for the implementation of the GBS verification scheme was also agreed, to include a 31 December 2017 deadline for the receipt of rule change information and request for new initial verification audits, if any.

(xi) *Navigation around offshore multiple structures*

The MSC adopted, subject to subsequent confirmation by the IMO Assembly, amendments on a recommendation to Governments to take into account safety of navigation when multiple structures at sea, such as wind turbines, are being planned.

The amendment would add a new paragraph in the General provisions on ships' routeing (resolution A.572(14), as amended) on establishing multiple structures at sea. It recommends that Governments should take into account, as far as practicable, the impact multiple structures at sea, including but not limited to wind turbines, could have on the safety of navigation, including any radar interference.

Traffic density and prognoses, the presence or establishment of routeing measures in the area, and the manoeuvrability of ships and their obligations under the 1972 Collision Regulations should be considered when planning to establish multiple structures at sea.

Sufficient manoeuvring space extending beyond the side borders of traffic separation schemes should be provided to allow evasive manoeuvres and contingency planning by ships making use of routeing measures in the vicinity of multiple structure areas.

(xii) *Navigational warnings circular*

The MSC approved a circular expressing grave concern over the reported launch of missiles by the Democratic People's Republic of Korea without due warnings. The circular urges all Members to attach the greatest importance to the safety of navigation and avoid taking any action which might adversely affect shipping engaged in international trade; and to comply with the requirements to issue relevant navigational warnings as set out in SOLAS and the World Wide Navigational Warning Service.

(xiii) *Establishment of effective dates for the Baltic Sea Special Area*

The Marine Environment Protection Committee (MEPC), at its 69th session, agreed to establish the effective dates for the application of the Baltic Sea Special Area under MARPOL Annex IV (Prevention of pollution by sewage from ships).

In the special area, the discharge of sewage from passenger ships will generally be prohibited unless the ship has in operation an approved sewage treatment plant that meets the applicable additional effluent standards for nitrogen and phosphorus in accordance with the 2012 Guidelines on implementation of effluent standards and performance tests for sewage treatment plants (resolution MEPC.227(64)).

The dates are: for new passenger ships, on 1 June 2019; for existing passenger ships other than those specified below, on 1 June 2021; and for existing passenger ships *en route* directly to or from a port located outside the special area and to or from a port located east of longitude 28°10' E within the special area that do not make any other port calls within the special area, on 1 June 2023.

A MEPC resolution adopting the effective dates encourages Member Governments, industry groups and other stakeholders to comply immediately on a voluntary basis with the Special Area requirements for the Baltic Sea Special Area.

(xiv) *Roadmap for reducing GHG emissions approved*

The MEPC approved a Roadmap for developing a comprehensive IMO strategy on reduction of GHG emissions from ships, which foresees an initial GHG reduction strategy to be adopted in 2018.

It contains a list of activities, including further IMO GHG studies and significant intersessional work, with relevant timelines and provides for alignment of those new activities with the ongoing work by the MEPC on the three-step approach to ship energy efficiency improvements. This alignment provides a way forward to the adoption of a revised strategy in 2023 to include short-, mid-, and long-term further measures, as required, including implementation schedules.

(xv) *Energy efficiency of international shipping*

The Committee considered the report of a correspondence group on the status of technological developments relevant to implementing Phase 2 (1 January 2020 to 31 December 2024) of the EEDI (Energy Efficiency Design Index) regulations. The energy-efficiency regulations require IMO to review the status of technological developments and, if proven necessary, amend the time periods, the EEDI reference line parameters for relevant ship types and reduction rates.

Following discussion in a working group, which reviewed the status of technological developments relevant to implementing phase 2 of EEDI requirements from 2020, the Committee agreed to retain the phase 2 requirements (other than ro-ro cargo ships and ro-ro passenger ships) and on the need for a thorough review of EEDI phase 3 (1 January 2025 and onwards) requirements, including discussion on its earlier implementation and the possibility of establishing a phase 4. Currently, Phase 3 requirements provide that new ships be built to be 30% more energy efficient compared to the baseline.

(xvi) *2020 global sulphur cap implementation date decided*

In a landmark decision for both the environment and human health, 1 January 2020 was confirmed as the implementation date for a significant reduction in the sulphur content of the fuel oil used by ships.

The decision to implement a global sulphur cap of 0.50% m/m (mass/mass) in 2020 represents a significant cut from the 3.5% m/m global limit currently in place and demonstrates a clear commitment by IMO to ensuring shipping meets its environmental obligations.

(xvii) *North Sea and Baltic Sea emission control areas for nitrogen oxides (NOx)*

The MEPC approved the designation of the North Sea and the Baltic Sea as emission control areas (ECA) for nitrogen oxides (NOx) under regulation 13 of MARPOL Annex VI. The draft amendments to formally designate the NOx ECAs will be put forward for adoption at the next session of the Committee (MEPC 71).

The draft amendments to MARPOL Annex VI would see both ECAs enter into effect on 1 January 2021. Designation as a NOx ECA would require marine diesel engines to comply with the Tier III NOx emission limit when installed on ships constructed on or after 1 January 2021 and operating in the North Sea and the Baltic Sea. Furthermore, provisions were approved to allow ships fitted with non-Tier III compliant marine diesel engines to be built, converted, repaired and/or maintained at shipyards located in the NOx Tier III ECAs. Both areas are already ECAs for SOx.

(xviii) *Particularly Sensitive Sea Area (PSSA) designated in Papua New Guinea*

The MEPC designated the region surrounding Jomard Entrance, part of the Louisiade Archipelago at the south eastern extent of Milne Bay Province, Papua New Guinea, as a Particularly Sensitive Sea Area (PSSA). The PSSA includes established routeing systems (four two-way routes and a precautionary area) which were adopted in 2014 and entered into force on 1 June 2015.

(xix) *Implementation of the BWM Convention—Revised Guidelines for approval of ballast water management systems adopted*

The Committee welcomed the news that the conditions for entry into force of the International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention), 2004, were met on 8 September 2016 and consequently the treaty will enter into force on 8 September 2017.

The MEPC adopted revised Guidelines for approval of ballast water management systems (G8), which update the Guidelines issued in 2008.

The revision to the guidelines updates the approval procedures for ballast water management systems (BWMS), including more robust test and performance specifications as well as more detailed requirements for type approval reporting and control and monitoring equipment, among others.

It was also agreed that the approval process should be made mandatory and the MEPC instructed the IMO Secretariat to prepare the Code for approval of ballast water management systems as well as draft amendments to the BWM Convention making the Code mandatory, for circulation with a view to adoption following entry into force of the Convention.

The MEPC also further discussed the agreed roadmap for implementation of the BWM Convention and agreed to instruct a correspondence group to develop a structured plan for data gathering and analysis of experience gained with the implementation of the BWM Convention.

With regards to the dates of implementation of the BWM Convention, the MEPC recalled that proposed draft amendments to regulation B-3 of the Convention relating to the time scale for implementation of its requirements had been previously approved at the last session of the Committee (MEPC 69) for circulation upon entry into force of the Convention, with a view to subsequent adoption. The draft amendments would provide for compliance with regulation D-2 (Ballast water performance standard) of the Convention by a ship's first renewal survey following entry into force.

The Committee granted final approval to one BWMS that makes use of active substances and basic approval to one system. The Committee noted that the total number of type-approved BWMS stands now at 69.

(*c*) Adoption of amendments to conventions and protocols

(i) *Survival craft safety*

The MSC, at its 96th session, adopted amendments to SOLAS regulations III/3 and III/20 to make mandatory the requirements for maintenance, thorough examination, operational testing, overhaul and repair of lifeboats and rescue boats, launching appliances and release gear, which were also adopted at the session.

This package of provisions, with an expected entry into force date of 1 January 2020, aims to prevent accidents with survival craft and addresses longstanding issues such as the need for a uniform, safe and documented standard related to the servicing of these appliances, as well as the authorization, qualification and certification requirements to ensure that a reliable service is provided.

The adoption of the amendment and requirements for maintenance, thorough examination, operational testing, overhaul and repair represents the culmination of some ten years work on the issue. The intention is to ensure that seafarers can be confident that they can fully rely on the IMO-mandated life-saving appliances and equipment at their disposal.

(ii) *Ships routeing systems*

The MSC, at its 96th session, adopted a number of new and amended ships routeing systems:

- New traffic separation schemes "Off Southwest Australia";
- New traffic separation scheme "In the Corsica Channel";
- Amendments to the existing traffic separation scheme "In the Approaches to Hook of Holland and at North Hinder" and associated measures, superseding the existing precautionary areas "In the approaches to Hook of Holland and at North Hinder";
- Amendments to the existing traffic separation scheme "At West Hinder";
- Amendments to the existing traffic separation scheme "In Bornholmsgat";
- New two-way routes and precautionary areas "Approaches to the Schelde estuary", superseding the existing precautionary area "In the vicinity of Thornton and Bligh Banks";
- New routeing measures "In Windfarm Borssele"; and
- Amendments to the existing area to be avoided "Off the coast of Ghana in the Atlantic Ocean".

(iii) *SOLAS amendments*

Furthermore MSC, at its 97th session, adopted the following amendments:

- Amendments to SOLAS, including amendments to regulation II-1/3-12 on protection against noise, regulations II-2/1 and II-2/10 on firefighting and new regulation XI-1/2-1 on harmonization of survey periods of cargo ships not subject to the ESP Code. The amendments are expected to enter into force on 1 January 2020;
- Amendments to the 2008 International code on Intact Stability (IS Code), relating to ships engaged in anchor handling operations and to ships engaged in lifting and towing operations, including escort towing. The amendments are expected to enter into force on 1 January 2020;
- Amendments to the International Code for Fire Safety Systems (FSS Code), clarifying the distribution of crew in public spaces for the calculation of stairways width. The amendments are expected to enter into force on 1 January 2020;
- Amendments to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code), aligning the wheelhouse window fire-rating requirements in the IGC Code with those in SOLAS chapter II-2. The amendments are expected to enter into force on 1 January 2020;
- Amendments to the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code). The amendments are expected to enter into force on 1 July 2018; and

– Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and its related STCW Code, to include new mandatory minimum training requirements for masters and deck officers on ships operating in Polar Waters; and an extension of emergency training for personnel on passenger ships. The amendments are expected to enter into force on 1 July 2018.

(iv) *MARPOL amendments*

The MEPC, at its 69th session, adopted the following amendments:

– Amendments to MARPOL and the NOx Technical Code 2008, with expected entry into force on 1 September 2017;
– Amendments to MARPOL Annex II, appendix I, related to the revised GESAMP hazard evaluation procedure;
– Amendments to MARPOL Annex IV relating to the dates for implementation of the discharge requirements for passenger ships while in a special area, *i.e.* not before 1 June 2019 for new passenger ships and not before 1 June 2021 for existing passenger ships;
– Amendments to MARPOL Annex VI regarding record requirements for operational compliance with NOx Tier III emission control areas; and
– Amendments to the NOx Technical Code 2008 to facilitate the testing of gas-fuelled engines and dual fuel engines.

The MEPC, at its 70th session, adopted mandatory MARPOL Annex VI requirements for ships to record and report their fuel oil consumption.

Under these amendments, ships of 5,000 gross tonnage and above will be required to collect consumption data for each type of fuel oil they use, as well as other, additional, specified data including proxies for transport work. The aggregated data will be reported to the flag State after the end of each calendar year and the flag State, having determined that the data has been reported in accordance with the requirements, will issue a Statement of Compliance to the ship. Flag States will be required to subsequently transfer this data to an IMO Ship Fuel Oil Consumption Database. IMO will be required to produce an annual report to the MEPC, summarizing the data collected.

6. Universal Postal Union[557]

On 18 March 2016 the Universal Postal Union (UPU) signed a Cooperation Agreement with the International Rail Transport Committee (CIT) concerning the transportation of mail *via* rail.

On 4 October 2016 the UPU concluded a Grant Agreement with the Bill and Melinda Gates Foundation concerning technical assistance on postal financial inclusion.

On 25 November 2016 the UPU concluded a Cooperation Agreement with the *Organisation internationale de la Francophonie*, in which the two organizations agree to work jointly on topics relating to economic and social development as well as professional training.

[557] For official documents and more information on the Universal Postal Union, see https://www.upu.int.

On 6 December 2016 the UPU signed a joint declaration with the United Nations Conference on Trade and Development (UNCTAD) in relation to UPU Congress resolution C 11/2012 concerning postal markets development, notably with regard to international postal trade facilitation for micro, small and medium enterprises.

7. World Meteorological Organization[558]

(*a*) Membership

In 2016, the membership of the World Meteorological Organization (WMO) remained unchanged at 185 member States and 6 territories.

(*b*) Agreements and other arrangements concluded in 2016

(i) *Agreements with States*

a. Finland

Memorandum of Understanding between WMO and Finnish Meteorological Institute (FMI) concerning cooperation in matters of mutual interest, signed on 10 and 15 June 2016.

b. Germany

Memorandum of Understanding between the WMO and *Deutscher Wetterdienst* (*DWD*) concerning cooperation in matters of mutual interest, signed on 30 May and 8 June 2016.

c. Italy

Agreement between the WMO and Italian National Institute for Environmental Protection and Research (ISPRA) regarding the arrangements for the fifteenth session of the WMO Commission for Hydrology (CHy-15), signed on 25 November 2016.

d. People's Republic of China

Agreement between the WMO and the Government of the People's Republic of China regarding the arrangements for the sixteenth session of the WMO Commission for Basic Systems (CBS-16), signed on 7 November 2016.

e. Republic of Kazakhstan

Cooperation Agreement between the WMO and National Hydrometeorological Service of Republic of Kazakhstan (KAZHYDROMET) concerning the provision of support and services to the Central Asia Region Flash Flood Guidance System (CARFFGS), signed on 15 April 2016.

[558] For official documents and more information on the World Meteorological Organization, see https://public.wmo.int/en.

f. Republic of Korea

Memorandum of Understanding between WMO and Korea Meteorological Administration (KMA) concerning the Hosting of a Regional Training Center, signed on 15 June 2016.

g. Sweden

Memorandum of Understanding between WMO and Swedish Meteorological and Hydrological Institute (SMHI) concerning cooperation in matters of mutual interest, signed on 22 August 2016.

h. Turkey

Cooperation Agreement between the WMO and Turkish State Meteorological Service (TSMS) concerning the provision of support and services to the Black Sea and Middle East Flash Flood Guidance (BSMEFFG) System, signed on 13 April and 3 May 2016.

Cooperation Agreement between the WMO and Turkish State Meteorological Service (TSMS) concerning the provision of support and services to the South East Europe Flash Flood Guidance (SEEFFG) System, signed on 13 April and 3 May 2016.

i. United Arab Emirates

Agreement between WMO and the Government of the United Arab Emirates regarding the arrangements for the sixteenth session of WMO Regional Association II (Asia), signed on 26 September 2016.

j. United Kingdom of Great Britain and Northern Ireland

Memorandum of Understanding between WMO and United Kingdom Meteorological Office (MET OFFICE) concerning the establishment of Fellowship for Training of Experts, signed on 27 January and 12 February 2016.

Memorandum of Understanding between the WMO and United Kingdom Meteorological Office (MET OFFICE) concerning the establishment and the maintain television weather presentation studios in Africa, signed on 30 May and 14 June 2016.

Memorandum of Understanding between WMO and United Kingdom Meteorological Office (MET OFFICE) concerning cooperation in matters of mutual interest, signed on 24 August and 5 September 2016.

(ii) *Agreements with the United Nations, specialized agencies and related organizations*

United Nations Development Programme (UNDP) and Norwegian Refugee Council (NRC)

Letter of Understanding between WMO, UNDP and NRC concerning the hosting by UNDP of a deployed NRC Standby Experts, signed on 26, 27 June and 3 August 2016.

(iii) *Agreements with other intergovernmental organizations, non-governmental organizations and entities*

a. Asia-Oceania Meteorological Satellite Users Conference (AOMSUC)

Memorandum of Understanding between WMO and AOMSUC concerning cooperation in matters of mutual interest, signed on 16 June 2016.

b. Ewha Womans University (EWU)

Memorandum of Understanding between the WMO and EWU concerning cooperation in advertising, selection and sponsorship of expert in meteorology and climatology, signed on 13 and 27 April 2016.

c. Green Climate Fund (GCF)

Master Arrangement between the WMO and GCF concerning cooperation in matters of mutual interest, signed on 30 May and 1 June 2016.

d. Group on Earth Observations (GEO)

Standing Arrangement between WMO and GEO concerning cooperation in matters of mutual interest, signed on 2 November 2016.

e. Hohai University (Hohai), China

Memorandum of Understanding between the WMO and Hohai University regarding Fellowships Education Programme, signed on 20 and 28 October 2016.

f. IGAD Climate Prediction and Applications Centre (ICPAC) and Norwegian Refugee Council (NRC)

Memorandum of Understanding between WMO, ICPAC and NRC concerning the hosting of deployed Standby Experts, signed on 11, 14 and 28 April 2016.

g. International Association for Urban Climate (IAUC)

Memorandum of Understanding between WMO and IAUC concerning the establishment and maintain cooperation in matters of mutual interest, signed on 11 April and 13 May 2016.

h. International Energy Agency (IEA)

Memorandum of Understanding between WMO and IEA in the area of collaboration to support Countries in developing their Energy strategies using Present and Future Climate Information, signed on 17 March and 8 April 2016.

i. International Union for Conservation of Nature and Natural Resources (IUCN)

Memorandum of Understanding between the WMO and the International Union for Conservation of Nature and Natural Resources (IUCN) on behalf of Global Island Partnership

(GLISPA) concerning cooperation and collaboration in the activities of IUCN/GLISPA and WMO SIDS-MITS Programme (Small Island Developing States and Member Island Territories), signed on 21 and 25 March 2016.

j. Nanjing University of Information Science and Technology (NUIST)

Memorandum of Understanding between the WMO and NUIST concerning the establishment of cooperation on advertising, selection and sponsorship of expert, signed on 11 and 20 April 2016.

k. Regional Integrated Multi-hazard Early Warning System (RIMES)

Letter of Agreement between WMO and RIMES concerning cooperation in matters of mutual interest, signed on 12 February 2016.

l. *Universitat Rovira* i *Virgili* (*URV*), Spain

Memorandum of Understanding between the WMO and *URV* concerning cooperation in matters of mutual interest, signed on 27 October 2016.

8. International Fund for Agricultural Development[559]

(*a*) Re-establishment of a Committee to review the emoluments of the President Resolution 191/XXXIX

At its thirty-ninth session (17 to 18 February 2016), the Governing Council, by Resolution 191/XXXIX, taking into account the proposal of document GC 39/L.6/Rev.1 and the Executive Board's recommendation, decided: (i) to re-establish an emoluments committee to review the overall emoluments and other conditions of employment of the President of the International Fund for Agricultural Development (IFAD), including the conclusions of a study on availability and pricing in Rome of suitable housing for the President. The committee would submit to the fortieth 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.

(*b*) Proposal for settlement of outstanding contributions of the Republic of Iraq

At its 117th session (13 to 14 April 2016), the Executive Board considered and approved a Proposal for settlement of outstanding contributions of the Republic of Iraq, in accordance with paragraph 13 to 18 of document EB 2016/117/R.26.

[559] For official documents and more information on the International Fund for Agricultural Development, see https://www.ifad.org.

(*c*) IFAD's variable interest rate methodology: Impact of negative interest rates

At its 118th session (21 to 22 September 2016), the Executive Board, having considered document EB 2016/118/R.28, approved the decision to modify the methodology for setting IFAD's variable interest rates applicable for loans approved on variable terms detailed in EB 2009/98/R.14 and EB 2011/102/R.11. The modification would allow, as of 1 January 2017, the introduction of a zero floor to the LIBOR/EURIBOR components of IFAD's reference rate and would apply to existing and newly approved loans on the above-mentioned terms.

(*d*) Access the *Kreditanstalt Für Wiederaufbau (KfW)* borrowing facility for the Tenth Replenishment of IFAD's Resources

At its 118th session, the Executive Board considered and approved the recommendation as contained in document EB 2016/118/R.29 to access the final tranche (EUR 100 million) of funds under the current *KfW* Framework Agreement (EUR 400 million) and use the funds to deliver the IFAD10 target programme of loans and grants of US$ 3.2 billion. The Executive Board further approved that IFAD enter into individual loan agreements as foreseen therein.

(*e*) Supplementary fund contribution from the Rockefeller Foundation and from the Bill & Melinda Gates Foundation

At its 118th session, the Executive Board authorised the President to negotiate and finalise supplementary funds agreements with the Rockefeller Foundation in support of value chain development activities within the ongoing value Chain Development Programme in Nigeria, as contained in document EB 2016/118/R.36 and with the Bill & Melinda Gates Foundation, as contained in document EB 2016/118/R.40, in support of rural finance activities in Nigeria.

(*f*) Amendments to the instrument establishing the Trust Fund for the IFAD Adaptation for Smallholder Agriculture Programme

At its 105th session (3 to 4 April 2012), the Executive Board approved the resolution on the establishment of a trust fund (the Trust Fund) for the IFAD Adaptation for Smallholder Agriculture Programme (ASAP), as contained in the annex to document EB 2012/105/R.45. The resources of the Trust Fund have been administered by IFAD and have been used exclusively for the purpose of financing, in the form of grants, components of the IFAD-financed core portfolio of projects and programmes to increase the resilience of small farmers to climate change. Considering that phase I of the ASAP will be concluded in September 2017, a proposal was made at the 119th session of the Executive Board to initiate a second phase of the ASAP (ASAP2) to mobilise new supplementary funding from interested donors. Having considered the proposal, the Executive Board approved the amendments to the instrument establishing the Trust Fund as set out in the Annex of document EB 2016/119/R.20.

(*g*) Borrowing agreement with the *Agence Française de Développement (AFD)* to support the IFADIO programme of loans and grants

At its 119th session, the Executive Board considered and approved the proposal to enter into a borrowing agreement with the *Agence Française de Développement (AFD)* to support IFAD10 programme of loans and grants, as contained in document EB 2016/119/R.38. This will be the first sovereign loan to be implemented under the IFAD Sovereign Borrowing Framework approved by the Executive Board at its 114th session, as contained in document EB 2015/114/R.17.

(*h*) Principles of Conduct for Representatives of the Executive Board of IFAD

At its 119th session, the Executive Board approved an amendment to rule 7 of the Rules of Procedure of the Executive Board and the addition of an annex to said rules, to adopt the Principles of Conduct for Representatives on the Executive Board of IFAD, as presented in document EB 2016/119.R44.

(*i*) Journal of Law and Rural Development

The first issue of the IFAD Journal of Law and Rural Development, which focused on issues related to land tenure, was prepared during the course of 2016 and published in February 2017. The Journal will be published annually.

(*j*) Accreditation from the Green Climate Fund

On 14 October 2016, the Board of the Green Climate Fund (GCF) approved, through Decision B. 14/11, the accreditation of IFAD. Negotiation with the GCF regarding the Accreditation Master Agreement are on-going.

9. United Nations Industrial Development Organization[560]

(*a*) Constitutional matters

In 2016, Kiribati deposited with the Secretary-General of the United Nations an instrument of accession to the Constitution of the United Nations Industrial Development Organization (UNIDO). The Constitution entered into force for Kiribati on 9 February 2016 in accordance with its article 25 (2) (*c*). Pursuant to paragraph 1 of Annex I to the Constitution, if a State not listed in any of those lists becomes a Member of UNIDO, as is the case of Kiribati, the General Conference (GC), in this case the GC 17 (scheduled to take place from 27 November to 1 December 2017), shall decide, after appropriate consultations, in which of those lists Kiribati is to be included.

On 21 December 2016, the Government of the Slovak Republic deposited with the Secretary-General of the United Nations an instrument of denunciation of the UNIDO Constitution. In accordance with article 6(2) of the Constitution, the denunciation will

[560] For official documents and more information on the United Nations Industrial Development Organization, see https://www.unido.org.

take effect on the last day of the fiscal year following that during which such instrument was deposited, i.e., on 31 December 2017.

(*b*) Agreements and other arrangements concluded in 2016

Information on agreements and other arrangements concluded in 2016 is available in Appendix F to UNIDO's 2016 Annual Report.[561]

10. Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization[562]

(*a*) Membership

The Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO) is composed of States Signatories to the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT). By the end of 2016, the CTBT had 183 States signatories.

During 2016, Myanmar deposited its instrument 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 is needed: China, Democratic People's Republic of Korea, Egypt, India, Islamic Republic of Iran, Israel, Pakistan, and United States of America.

(*b*) Legal status, privileges and immunities and international agreements

In addition to the Headquarters Agreement, legal status, privileges and immunities are granted to the Commission through "Facility Agreements" concluded with each of the 89 States which are hosting one or more of the 337 monitoring facilities comprising the International Monitoring System (IMS) foreseen to be established under the CTBT. In 2016, a facility agreement was concluded with Armenia. As of 2016, a total of 49 facility agreements have been concluded out of which 40 have 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,[563] fifteen such agreements have now been concluded: Australia, France, Greece, Indonesia, Japan, Malaysia, Myanmar, the Philippines, Portugal, Republic of Korea, the Russian Federation, Thailand, Turkey and two with the United States of America, based on the model approved by the Commission.

To provide for the necessary privileges and immunities and arrangements for the conduct of workshops or training courses outside of Austria, nine Exchanges of Letters were concluded with host States.

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[561] Available at https://www.unido.org/resources/publications/flagship-publications/annual-report/annual-report-2016.

[562] For official documents and more information on the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, see https://www.ctbto.org.

[563] *United Nations Juridical Yearbook 2006* (United Nations Publication, Sales No. E.09.V1), p. 256.

(*c*) Legislative Assistance Activities

Pursuant to paragraph 18 of the annex to the 1996 resolution establishing the Preparatory Commission, the Provisional Technical Secretariat of the Preparatory Commission continued to provide advice and assistance upon request to States in three areas: (*a*) legal and technical information about the CTBT in order to facilitate signature or ratification of the Treaty; (*b*) legal and administrative measures necessary for the implementation of the Treaty; and (*c*) 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.

The Secretariat continued to provide comments and assistance in 2016 on legal assistance requests from States parties or from within the Secretariat. It also maintains a Legislation Database on its website (www.ctbto.org) to facilitate the exchange of information on national implementing legislation as well as other documentary assistance tools, including the Legislation Questionnaire.

11. International Atomic Energy Agency[564]

(*a*) Membership

In 2016, Turkmenistan became a member State of the International Atomic Energy Agency (IAEA). By the end of the year, there were 168 member States.

(*b*) Multilateral treaties under IAEA auspices

(i) *Convention on the Physical Protection of Nuclear Material*[565]

In 2016, Zambia became a party to the Convention and Myanmar deposited an instrument of accession thereto. By the end of the year, there were 154 parties and one contracting State.

(ii) *Amendment to the Convention on the Physical Protection of Nuclear Material*[566]

In 2016, Azerbaijan, Cameroon, Côte d'Ivoire, Kuwait, Marshall Islands, Montenegro, New Zealand, Nicaragua, Pakistan, Paraguay, Serbia, and Uruguay adhered to the amendment and, consequently, the amendment entered into force on 8 May 2016. After its entry into force, E1 Salvador, Kyrgyzstan and Swaziland became parties to the amendment and Myanmar deposited an instrument of ratification thereof. By the end of the year, there were 106 parties and one contracting State.

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[564] For official documents and more information on the International Atomic Energy Agency, see https://www.iaea.org.

[565] United Nations, *Treaty Series*, vol. 1456, p. 101.

[566] *IAEA International Law Series*, No. 2, 2006.

(iii) *Convention on Early Notification of a Nuclear Accident*[567]

In 2016, Ghana became a party to the Convention. By the end of the year, there were 120 parties.

(iv) *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*[568]

In 2016, Ghana became a party to the Convention and Niger deposited an instrument of acceptance thereof. By the end of the year, there were 113 parties and one contracting State.

(v) *Convention on Nuclear Safety*[569]

In 2016, Myanmar and Niger deposited an instrument of accession to the Convention. By the end of the year, there were 78 parties and two contracting States.

(vi) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management*[570]

In 2016, Jordan, Lesotho and Peru became parties to the Convention and Niger deposited an instrument of accession thereto. By the end of the year, there were 73 parties and one contracting State.

(vii) *Vienna Convention on Civil Liability for Nuclear Damage*[571]

In 2016, the status of the Convention remained unchanged with 40 parties.

(viii) *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage*[572]

In 2016, Niger became a party to the Protocol. By the end of the year, there were 13 parties.

(ix) *Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention*[573]

In 2016, the status of the Convention remained unchanged with 28 parties.

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[567] United Nations, *Treaty Series*, vol. 1439, p. 275

[568] *Ibid.*, vol. 1457, p. 133.

[569] *Ibid.*, vol. 1963, p. 293.

[570] *Ibid.*, vol. 2153, p. 303.

[571] *Ibid.*, vol. 1063, p. 265.

[572] *Ibid.*, vol. 2241, p. 270.

[573] *Ibid.*, vol. 1672, p. 293.

(x) *Convention on Supplementary Compensation for Nuclear Damage*[574]

In 2016, Ghana and India became parties to the Convention. By the end of the year, there were 9 parties.

(xi) *Optional Protocol Concerning the Compulsory Settlement of Disputes*[575]

In 2016, the status of the Protocol remained unchanged with 2 parties.

(xii) *Fifth Agreement to Extend the 1987 Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (RCA)*[576]

In 2016, the status of the Agreement remained unchanged with 17 parties.

(xiii) *African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA)—(Fifth Extension)*[577]

In 2016, Burundi, Côte d'Ivoire, Kenya, Madagascar, Mauritania, Namibia, Nigeria, Seychelles, Swaziland, Uganda and Zimbabwe became parties to the Fifth Extension of the Agreement. By the end of the year, there were 27 parties.

(xiv) *First Agreement to Extend the Co-operation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)*[578]

In 2016, El Salvador and Guatemala became parties to the Agreement. By the end of the year, there were 19 parties.

(xv) *Co-operative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology (ARASIA)—(Second Extension)*[579]

In 2016, Kuwait became a party to the Agreement. By the end of the year, there were 9 parties.

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[574] United Nations, *Treaty Series*, registration no. 52722.

[575] *Ibid.*, vol. 2086, p. 94.

[576] IAEA, document INFCIRC/167/Add.23.

[577] IAEA, document INFCIRC/377 and INFCIRC/377/Add.20 (fifth extension).

[578] IAEA, document INFCIRC/582 and INFCIRC/582/Add.4 (extension of the agreement).

[579] IAEA, document INFCIRC/613 and INFCIRC/613/Add.3 (second extension).

(xvi) *Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[580]

In 2016, the status of the Agreement remained unchanged with 7 parties.

(xvii) *Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[581]

In 2016, the status of the Agreement remained unchanged with 6 parties.

(*c*) Safeguards Agreements

During 2016, a Safeguards Agreement pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) between the IAEA and the Republic of Liberia, and a Protocol Additional thereto, were approved by the IAEA Board of Governors.

In 2016, Protocols Additional to the Safeguards Agreements pursuant to the NPT between the IAEA and Cameroon,[582] and the Republic of Côte d'Ivoire[583] entered into force. On 16 January 2016, the Islamic Republic of Iran began to provisionally apply the Additional Protocol to its Safeguards Agreement,[584] pending its entry into force.

(*d*) Revised supplementary agreements concerning the provision of technical assistance by the IAEA (RSA)

In 2016, Antigua and Barbuda, Central African Republic, Djibouti, Dominica, Marshall Islands, Togo and Vanuatu signed an RSA Agreement with the IAEA. By the end of the year, there were 132 States parties to an RSA Agreement.

(*e*) IAEA legislative assistance activities

In 2016, the Agency continued to provide legislative assistance to its member States. Country specific bilateral legislative assistance was provided to 19 member States through written comments and advice on drafting national nuclear legislation. The Agency also reviewed the legislative framework of newcomer countries as part of Integrated Nuclear Infrastructure Review missions. Short-term scientific visits to Agency Headquarters were organized for a number of individuals, allowing fellows to gain further practical experience in nuclear law.

The Agency organized the sixth session of the Nuclear Law Institute in Baden, Austria, from 10 to 21 October 2016. The comprehensive two-week course, which uses modern teaching methods based on interaction and practice, is designed to meet the increasing

[580] IAEA, document INFCIRC/702.

[581] *Ibid.*

[582] IAEA, document INFCIRC/641/Add.1.

[583] IAEA, document INFCIRC/309/Add.1.

[584] IAEA, document INFCIRC/214/Add.1.

demand by IAEA member States for legislative assistance and to enable participants to acquire a solid understanding of all aspects of nuclear law, as well as to draft, amend or review their national nuclear legislation. Fifty-eight participants from IAEA member States attended the training.

Two sub-regional workshops on nuclear law were conducted for Member States of the Asia and the Pacific Region in Singapore (13 to 17 June 2016) and in Amman, Jordan (12 to 15 December 2016). Seventy participants from 27 member States attended these workshops. Five national workshops on nuclear law were also organized in 2016. The workshops addressed all aspects of nuclear law and created a forum for an exchange of views on topics relating to the international legal instruments adopted under the auspices of the IAEA for the safe, secure and peaceful use of nuclear energy and ionizing radiation.

(*f*) Conventions

(i) *Convention on Nuclear Safety (CNS)*

Several meetings were held for the preparation of the Seventh Review Meeting of the Contracting Parties to the CNS (March to April 2017), including a Turnover Meeting held in Vienna on 1 March 2016. This meeting allowed the officers of the CNS Sixth Review Meeting to share with the officers elected for the CNS Seventh Review Meeting their experience and feedback on the preparation and conduct of the previous review meetings.

(ii) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (Joint Convention)*

As requested by the contracting parties to the Joint Convention at their Fifth Review Meeting, a topical meeting on the challenges and responsibilities of multinational radioactive waste disposal facilities took place from 5 to 7 September 2016, at the IAEA headquarters, in Vienna and was attended by 29 contracting parties and the OECD/NEA, as an observer. The topical meeting included sessions on, *inter alia*, the current status of the initiatives for multinational radioactive waste disposal, the safety aspects of construction, operation and surveillance of disposal facilities, the roles and responsibilities in the context of multinational disposal, as well as a session addressing the liability and financial issues of such facilities.

A meeting to discuss feedback from contracting parties to improve the review process for the Joint Convention was held in October 2016 and its outcome will be discussed at the Third Extraordinary Meeting of the Contracting Parties to the Joint Convention (May 2017).

(iii) *Convention on Early Notification of a Nuclear Accident (Early Notification Convention) and Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Assistance Convention)*

The Eighth Meeting of the Representatives of the Competent Authorities identified under the Early Notification and the Assistance Conventions took place at the IAEA headquarters, from 6 to 10 June 2016. The objective of the meeting was to facilitate exchange

of information and experience in the area of emergency preparedness and response and cooperation among the Competent Authorities. It consisted of eight technical sessions relating to, *inter alia*, safety standards in EPR, information exchange and international assistance in an emergency, improvements in EPR after the Fukushima Daiichi accident and assessment and prognosis in an emergency. It also included a number of side events.

(iv) *The Convention on the Physical Protection of Nuclear Material (CPPNM) and its Amendment*

The Amendment to the Convention on the Physical Protection of Nuclear Material, which was adopted on 8 July 2005, entered into force on 8 May 2016. Pursuant to article 20.2 of the CPPNM any amendment to the Convention "shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State party on the day on which that State party deposits its instrument of ratification, acceptance or approval of the amendment." Following ratification by Uruguay and Nicaragua, on 8 April 2016, the conditions for the entry into force of the 2005 Amendment were met. At the end of 2016, 48 States parties to the CPPNM still had to ratify the Amendment, and the IAEA Secretariat continued to direct its efforts towards "universalization" of the Amendment.

The second meeting of the representatives of the States parties to the CPPNM and the CPPNM amendment was organized from 30 November to 2 December 2016 to discuss the new obligations under the CPPNM amendment, focusing on issues relating to information sharing. The participants shared their national experience in adhering to and implementing the CPPNM amendment. The need to promote universal adherence to the CPPNM and its amendment was highlighted during the meeting which was attended by 119 participants.

(v) *Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology*

The text of the Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology, 2017 (the 2017 RCA) was adopted at Ulaanbaatar on 18 May 2016.

Upon its entry into force, the 2017 RCA will replace the Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology, 1987 (the 1987 RCA), as extended in 1992, 1997, 2007, and 2012, and, pursuant to article XIII.2 thereof, "shall be of unlimited duration".

Pursuant to article XIII. 1 thereof, the 2017 RCA "shall enter into force upon receipt by the Director General of the Agency of the second notification of acceptance in accordance with Article XII. In the event such notification is received by the Director General of the Agency prior to the expiration of the extended 1987 RCA, this Agreement shall enter into force on the date of expiration of the said Agreement. With respect to Governments accepting this Agreement thereafter, it shall enter into force on the date of receipt by the Director General of the Agency of the notification of such acceptance."

(*g*) Civil liability for nuclear damage

The International Expert Group on Nuclear Liability (INLEX) continues to serve as the Agency's main forum for questions related to nuclear liability. At its 16th regular meeting, which took place in May 2016, the Group reiterated its recommendation that, although there was no need for a specific international liability regime covering radioactive sources, licenses for at least Categories 1 and 2 sources should include a requirement that the licensee take out insurance, or other financial security, to cover its potential third-party liability. The Group also discussed, *inter alia*, liability issues relating to long-term storage and disposal facilities, and identified in this context a number of issues that will need further discussion. In addition, the Group discussed the scope of application of the nuclear liability conventions deposited with the IAEA with respect to fusion installations and SMRs.

12. Organization for the Prohibition of Chemical Weapons[585]

(*a*) Membership

In 2016, the number of States parties to the Chemical Weapons Convention ("the Convention" or "CWC") remained unchanged, namely 192.

(*b*) Legal status, privileges and immunities and international agreements

During 2016, the Organization for the Prohibition of Chemical Weapons (OPCW) continued to negotiate privileges and immunities agreements with Member States in accordance with paragraph 50 of article VIII of the Convention. As a result, the privileges and immunities agreement with Hungary, concluded by the Executive Council in 2015, entered into force on 25 May 2016.

During 2016, the OPCW also concluded a number of international agreements, including, *inter alia*, facility agreements, voluntary contribution agreements, exchange of letters, agreements regarding the conduct of workshops, exercises, seminars and trainings, and memoranda of understanding, that entail substantial undertakings at the policy level or that are intended to facilitate the day-to-day work of the Technical Secretariat in support of the objectives of the Convention.

(*c*) Legislative assistance activities

Throughout 2016, the Technical Secretariat of the OPCW continued to render assistance upon request, to States parties that have yet to adopt legislative and other measures to implement their obligations under the Convention, as well as to States parties wishing to update their legal framework. The OPCW continued to provide tailor-made assistance on national implementation of the Convention, pursuant to: (*a*) subparagraph 38(*e*) of article VIII of the Convention; (*b*) the decision on national implementation measures of article VII obligations adopted by the Conference of the States Parties (the Conference) at its Fourteenth Session (C-14/DEC.12, dated 4 December 2009); and (*c*) paragraph 9.103(*c*)

[585] For official documents and more information on the Organisation for the Prohibition of Chemical Weapons, see https://www.opcw.org.

of the Report of the Third Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention (RC 3/3* , dated 19 April 2013).

In its implementation support efforts, the Technical Secretariat of the OPCW also acted in accordance with the Conference's decisions regarding the implementation of article VII obligations (C-8/DEC.16, dated 24 October 2003; C-10/DEC.16, dated 11 November 2005; C-11/DEC.4, dated 6 December 2006; C-12/DEC.9, dated 9 November 2007; C-13/DEC.7, dated 5 December 2008 and C-14/DEC.12, dated 4 December 2009). These decisions focused on, amongst other things, the obligations of States parties to designate or establish a National Authority to serve as national focal point for effective liaison with the OPCW and other States parties, as required by paragraph 4 of article VII of the Convention, and the steps necessary to enact national implementing legislation, including penal legislation and administrative measures to implement the Convention, as required by paragraph I of article VII of the Convention.

In the course of 2016, the number of National Authorities remained at 189, meaning only three States parties have not yet fulfilled the requirement under article V11(4) of the CWC to designate or establish a National Authority. Additionally, with regard to the adoption of the necessary legislative and/or administrative measures, 156 States parties (81 per cent) have submitted the text of their implementing legislation. Of these, as at 31 July 2016, 118 States parties (61 per cent) have informed the Secretariat of having adopted such legislative or administrative measures legislation covering all initial measures.

The Technical Secretariat continued to maintain formal and informal working contacts with States parties with which it had built a relationship through technical assistance programmes and consultations. A number of draft laws as well as existing legislation were reviewed by the Technical Secretariat upon request by States parties in the process of developing or updating their legal framework.

In addition to the bilateral assistance provided to States parties, the Technical Secretariat participated in and organised events to promote national legislative and/or administrative implementation of the Convention, such as global and regional annual meetings for National Authorities and legal workshops. Three sessions of the Internship Programme for Legal Drafters and National Authorities' Representatives were organized during the course of the year, in which 14 experts from 7 States parties participated and prepared the initial texts of their draft implementing legislation along with action plans for their adoption. In 2016, the Secretariat also piloted a number of new initiatives. The Stakeholders Forum, which is aimed at assisting States parties in achieving progress in the process of adoption of implementing legislation and facilitate the sharing of good practices and experiences, was organized in Dar-es-Salaam, Tanzania in November 2016 and was participated in by 11 States parties in Africa along with representatives of international and regional organizations. A sub-regional legal workshop was organized in Luanda, Angola in December 2016 which was aimed at providing tailor-made assistance to Portuguese-speaking States parties in developing the initial draft of their national implementing legislation. Finally, a side event entitled "Forum for States Parties on the Adoption of National Implementing Legislation" was organized during the 21st session of the Conference of the States parties in December 2016 and provided a platform for discussion of the importance and urgency of adopting CWC implementing legislation, the challenges being faced by States parties in this regard, and the forms of assistance that can be offered by the Technical Secretariat.

13. World Trade Organization[586]

(*a*) Membership

(i) *General*

Two new members formally joined the World Trade Organization (WTO) in 2016: Liberia (14 July 2016) and Afghanistan (29 July 2016). As of 31 December 2016, the WTO Membership counted 164 members.

Applications for WTO membership are examined in individual Accession Working Parties, which are established by the Ministerial Conference/General Council. The legal framework of WTO accessions is set out in article XII of the Marrakesh Agreement Establishing the World Trade Organization. As a result of bilateral and multilateral negotiations with WTO members, acceding States/separate customs territories undertake trade liberalizing commitments on market access; specific commitments on WTO rules; and agree to comply with the WTO Agreement.

(ii) *On-going accessions in 2016*

In 2016, the following States/separate customs territories were in the process of acceding to the WTO (in alphabetical order):

1. Algeria
2. Andorra
3. Azerbaijan
4. Belarus
5. Bhutan*
6. Bosnia and Herzegovina
7. Comoros, Union of the*
8. Equatorial Guinea*
9. Ethiopia*
10. Islamic Republic of Iran
11. Iraq
12. Lebanese Republic
13. Libya
14. Sao Tomé and Principe*
15. Serbia
16. Somalia*
17. Sudan*
18. Syrian Arab Republic
19. The Bahamas
20. Timor-Leste*
21. Uzbekistan

* Least developed countries (LDCs) (8)

In the year under review, progress in various accession processes was registered as follows:

– Two new Working Parties, on the accessions of Somalia and Timor-Leste, were established by the WTO General Council on 7 December 2016;

[586] For official documents and more information on the World Trade Organization, see https://www.wto.org.

– Draft Reports, or Elements thereof, were prepared, revised and circulated by the Secretariat for three Working Parties: Belarus (first edition), Bosnia and Herzegovina (one revision) and, Azerbaijan (one revision).

(*b*) Dispute settlement

The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes arising under 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, under a specific decision, the plurilateral trade agreement on government procurement. The DSB has 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.[587]

(i) *Requests for consultations received and panels established*

During 2016, the DSB received 17 requests for consultations (the first formal step in dispute settlement proceedings) pursuant to article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The DSB established eight new panels to adjudicate eight new cases. The DSB established panels in the following disputes:

– Ukraine—Anti-Dumping Measures on Ammonium Nitrate from Russia (DS493), complaint by Russia;
– European Union—Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia—(Second complaint) (DS494), complaint by Russia;
– Russia—Measures affecting the importation of railway equipment and parts thereof (DS499), complaint by Ukraine;
– Colombia—Measures Concerning Imported Spirits (DS502), complaint by the European Union;
– Korea—Anti-Dumping Duties on Pneumatic Valves from Japan (DS504), complaint by Japan;
– United States—Countervailing Measures on Supercalendered Paper from Canada (DS505), complaint by Canada;
– China—Export Duties on Certain Raw Materials (DS508), complaint by the United States.
– China—Duties and other Measures concerning the Exportation of Certain Raw Materials (DS509), complaint by the European Union.

[587] Further information on WTO dispute settlement in 2014 can be found in the WTO Annual Report 2015.

(ii) *Appellate Body and Panel reports adopted by the DSB*

In 2016, the DSB adopted the following six panel reports covering six disputes and five Appellate Body reports covering five disputes:

- Argentina—Measures Relating to Trade in Goods and Services (DS453) (Panel and Appellate Body reports);
- India—Certain Measures Relating to Solar Cells and Solar Modules (DS456) (Panel and Appellate Body reports);
- Colombia—Measures Relating to the Importation of Textiles, Apparel and Footwear (DS461) (Panel and Appellate Body reports);
- United States—Anti-dumping and Countervailing Measures on large residential washers from Korea (DS464) (Panel and Appellate Body reports);
- European Union—Anti-Dumping Measures on Biodiesel from Argentina (DS473) (Panel and Appellate Body reports);
- Russia—Tariff Treatment of Certain Agricultural and Manufacturing Products (DS485) (Panel report).

(*c*) Acceptances of the protocols

(i) *Acceptance of the Protocol Amending the TRIPS Agreement*

The amended TRIPS Agreement incorporating a flexibility on patents and public health shall take effect upon acceptance by two thirds of the Members for those Members that have accepted the Protocol Amending the TRIPS Agreement; thereafter, the Protocol shall take effect for each other Member upon acceptance by that Member. During 2016, Belize, Benin, Dominica, Lesotho, Mali, Nepal, Papua New Guinea, Peru, Qatar, Saint Lucia, Samoa, Seychelles, South Africa, Tajikistan, Tanzania, Thailand, and Ukraine accepted the Protocol.

(ii) *Acceptance of the Protocol Amending the Government Procurement Agreement*

The Protocol Amending the Government Procurement Agreement, which streamlines and modernizes the 1994 WTO Agreement on Government Procurement, entered into force on 6 April 2014. During 2016 the Republic of Moldova and Ukraine deposited instruments of acceptance of the Protocol amended agreement, which then entered into force for these Members on the 30th day following the deposit of the relevant instrument. In addition, the Protocol entered into force for the Republic of Korea in January 2016, following the deposit of its instrument of acceptance in December 2015.

(iii) *Acceptance of the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization*

On 27 November 2014, WTO Members adopted a Protocol of Amendment to insert the Trade Facilitation Agreement into the WTO Agreement Establishing the World Trade

Organization and opened it for acceptance by Members. The Protocol shall take effect upon acceptance by two thirds of the Members for those Members that have accepted the Protocol; thereafter, the Protocol shall take effect for each other Member upon acceptance by that Member. During 2016, 40 instruments of acceptance were deposited for this Protocol, bringing the total number of acceptance to 75.

14. International Criminal Court[588]

(*a*) Situations under preliminary examinations

Before the International Criminal Court (ICC) Office of the Prosecutor ("OTP") opens an investigation into a certain situation, a preliminary examination is carried out in order to determine whether a situation meets the legal criteria established by the Rome Statute of the International Criminal Court (Rome Statute) and there is a reasonable basis to proceed with an investigation.[589] Pre-Trial Chamber II has interpreted "reasonable basis" as a "sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court has been or is being committed".[590]

(i) *New situations*

a. The situation in Burundi

The Court has received a number of communications and reports documenting various alleged crimes in Burundi. The OTP issued two statements[591] expressing concern for the escalation of violence in Burundi which could lead to the commission of core crimes falling under the jurisdiction of the ICC.[592] On 25 April 2016, after reviewing all the communications sent by different actors, the OTP opened a preliminary examination regarding the situation in Burundi since April 2015.[593] On 27 October 2016, Burundi submitted an official notification of withdrawal from the Rome Statute to the United Nations Secretary-General.[594] Burundi's withdrawal will not affect the jurisdiction of the Court to conduct criminal investigations and proceedings commenced prior to the date on which

[588] For official documents and more information on the International Criminal Court, see https://www.icc-cpi.int.

[589] United Nations, *Treaty Series*, vol. 2187, p. 3.

[590] Pre-Trial Chamber II, "Decision Pursuant to article 15 of the Rome Statute on the Authorization of an Investigation into the situation in the Republic of Kenya", dated 31 March 2010 and registered 1 April 2010, ICC-01/09-19-Corr, para. 35.

[591] OTP, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, regarding the pre-election violence in Burundi, available at: https://www.icc-cpi.int//Pages/item.aspx?name=OTP-STAT-150508, 8 May 2015. *See also* Statement of the Prosecutor of the ICC, Fatou Bensouda, regarding the worsening security situation in Burundi, available at: https://www.icc-cpi.int//Pages/item.aspx?name=otp-stat-06-11-2015, 6 November 2015.

[592] See article 5 of the Rome Statute.

[593] OTP, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the opening of a preliminary examination of the situation in Burundi, available at: https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-25-04-2016, 25 April 2015.

[594] United Nations, C.N.805.2016.TREATIES-XVIII.10, 28 October 2016, available at: https://treaties.un.org/doc/Publication/CN/2016/CN.805.2016-Eng.pdf .

the withdrawal becomes effective on 27 October 2017. During the reporting period, the OTP continued to examine the information and verify the seriousness of documents received with regards to the alleged crimes committed.

b. The situation in Gabon

Pursuant to article 14 of the Rome Statute, the Gabonese government submitted a referral to the ICC on 20 September 2016 to investigate alleged crimes committed on its territory since May 2016.[595] On 29 September 2016, the Prosecutor announced the opening of a preliminary examination into the situation in Gabon and informed the public of the referral.[596] Crimes were allegedly committed in the context and aftermath of the presidential elections held on 27 August 2016. The tensions arose after the national electoral commission announced Ali Bongo Ondimba's victory of the elections, narrowly defeating the main opposition candidate Jean Ping.

(ii) *Ongoing situations*

a. The situation in Afghanistan

On 10 February 2003, Afghanistan deposited its accession instrument accepting the Court's jurisdiction over crimes defined in the Rome Statute that may be committed in its territory or by its nationals. The OTP opened a preliminary examination of the situation in Afghanistan in 2007. After nine years approximately, the OTP announced it was about to conclude its assessment of factors pursuant to article 53, paragraph 1 (*a*)–(*c*), of the Rome Statute and to decide whether to request an authorisation from the Pre-Trial Chamber to commence an investigation into the situation in Afghanistan.

b. The situation in Colombia

Since 2004, a preliminary examination has been ongoing into the situation in Colombia. The allegations varied between crimes against humanity and war crimes that may have been committed in the context of a non-international armed conflict between and among government forces, armed rebel groups and armed paramilitary groups. The OTP continued to observe the situation and to examine any development or change to the text of the Peace Agreement signed on 26 September 2016 after intense negotiations.[597]

(iii) *Other situations*

During the reporting period, the OTP continued to conduct preliminary examinations in the following situations:

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[595] Referral of the Gabonese Government to the ICC, 20 September 2016, available at: https://www.icc-cpi.int/iccdocs/otp/Referral-Gabon.pdf.

[596] OTP, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the referral from the Gabonese Republic, 29 September 2016 available at: https://www.icc-cpi.int//Pages/item.aspx?name=160929-otp-stat-gabon.

[597] OTP, Statement of the ICC Prosecutor, Fatou Bensouda, on the conclusion of the peace negotiations between the Government of Colombia and the Revolutionary Armed Forces of Colombia—People's Army, 1 September 2016, https://www.icc-cpi.int//Pages/item.aspx?name=160901-otp-stat-colombia.

a. The situation in Guinea

The OTP continued to assess the investigation of the situation in Guinea and encouraged the Guinean national authorities to hold their commitment to bring justice to victims of the events of 28 September 2009 before the end of 2017. Also, the OTP engaged with different national and international actors and partners to facilitate the organization of the trial phase.

b. The situation in Iraq/United Kingdom

The United Kingdom (UK) has been a State party to the Rome Statute since 4 October 2001, so the ICC has jurisdiction over crimes defined in the Rome Statute committed either on its territory or by its nationals. In May 2014, the OTP re-opened the previously closed preliminary examination in light of further information on the crimes allegedly committed by UK nationals in Iraq between 2003 and 2008. The OTP is currently concluding the assessment of the findings by examining the seriousness of the information submitted and by deciding whether there is a reasonable basis upon which to proceed with an investigation.

c. The situation in Nigeria

Nigeria deposited its instrument of ratification of the Rome Statute on 27 September 2001. The OTP identified eight potential cases involving the commission of crimes against humanity and war crimes under articles 7 and 8 of the Rome Statute. The OTP continues to examine and receive information concerning crimes that may have been committed in order to reach a final decision on whether to proceed with the investigation or not. In that context, the OTP also continues its consultations with national authorities and intergovernmental and non-governmental organisations to assist in ending impunity *via* prosecuting the perpetrators of the crimes and bringing justice to the victims of the crimes through appropriate remedial measures.

d. The situation in Palestine

The government of Palestine submitted a declaration under article 12, paragraph 3, of the Rome Statute accepting the jurisdiction of the ICC over alleged crimes committed in the occupied territories of Palestine, including East Jerusalem, since 13 June 2014. Palestine acceded to the Rome Statute through submission of its instrument of accession to the United Nations Secretary-General on 2 January 2015. The OTP's preliminary examination is in the subject matter jurisdiction phase. In March 2016, the OTP conducted a working level mission to Amman in order to discuss some preliminary examination matters with the representatives of Palestinian government and some Palestinian NGOs. The OTP has confirmed the ongoing status of the preliminary examination into the situation in Palestine in the context of the OTP's visit to the Israeli and Palestinian territories on 5 October 2016.[598]

[598] OTP, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, ahead of the Office's visit to Israel and Palestine, 5 October 2016, https://www.icc-cpi.int//Pages/item.aspx?name=161005-OTP-stat-Palestine.

e. The situation in Ukraine

The Ukrainian government has accepted jurisdiction of the Court over Rome Statute crimes allegedly committed on its territory or by its nationals from 21 November 2013 onwards. During the reporting period, the OTP continued its assessment of the information submitted and its examination of factual and legal matters in collaboration with national authorities, civil society and other stakeholders in the situation in Ukraine. Because of the open-ended declaration made by the Ukrainian government, the OTP continued to consider any new allegations of crimes falling under the jurisdiction of the ICC. In addition, the OTP gathered information about the national proceedings at this stage of the preliminary examination.

f. The situation of Registered Vessels of Comoros, Greece, and Cambodia

Following the preliminary examination, the OTP decided in 2013 not to proceed with the investigation due to the insufficient gravity of crimes. As a response to an application filed by representatives of Comoros, Pre-Trial Chamber I requested the OTP to review its decision pursuant to article 53, paragraph 3, of the Rome Statute. The OTP appealed the Chamber's request, but the Appeals Chamber dismissed the Prosecutor's appeal on 6 November 2015. Consequently, the OTP is required to review its decision as soon as possible pursuant to rule 108, paragraph 2, of the Rules of Procedure and Evidence of the ICC. This reconsideration was still ongoing at the end of the reporting period.

(*b*) Situations and Cases before the Court

(i) *The situation in Georgia*

Georgia ratified the Rome Statute on 5 September 2003. In the context of an international armed conflict (Georgia, South Ossetia and Russia) between 1 July and 10 October 2008, the OTP announced on 14 August 2008 that a preliminary examination of the situation in Georgia would be conducted. On 27 January 2016, the Pre-Trial Chamber granted the OTP's request for authorisation to open an investigation into the situation in Georgia.

(ii) *The situation in Central African Republic II*

The Central African Republic referred the second situation in its territory to the ICC on 1 August 2012 pursuant to article 14 of the Rome Statute. The investigation was opened on 24 September 2014 and the OTP's investigations are currently ongoing.

(iii) *The situation in Mali*

The Government of Mali has referred the situation which has been ongoing on its territory since January 2012 onwards to the ICC. On 6 January 2013, the OTP opened an investigation into the situation, and, on 18 September 2015, Pre-Trial Chamber I issued an arrest warrant for Mr. Ahmed Al Faqi Al Mahdi. After a brief confirmation stage, the trial phase commenced on 22 August 2016 and finished on 27 September 2016 by a verdict rendered by Trial Chamber VIII in which Mr. Ahmed Al Faqi Al Mahdi was found guilty after his plea

to that effect. He has been convicted as a co-perpetrator of the war crime of intentionally directing attacks against historical monuments and buildings dedicated to religion including nine mausoleums and mosques in Timbuktu and sentenced to nine years' imprisonment. The case was in the reparation/compensation stage at the end of the reporting period.

(iv) *The situation in Côte d'Ivoire*

The ICC may exercise jurisdiction over crimes defined in the Rome Statute committed on Côte d'Ivoire's territory or by its nationals since 19 September 2002 onwards. The OTP has identified three cases in the situation so far. The Gbagbo case and the Blé Goudé case were joined on 11 March 2015. Therefore, the situation currently includes two cases:

- *The Prosecutor* v. *Laurent Gbagbo and Charles Blé Goudé*, ICC-02/11-01/15 (trial phase);
- *The Prosecutor* v. *Simone Gbagbo*, ICC-02/11-01/12 (execution of the warrant of arrest pending).

(v) *The situation in Libya*

The United Nations Security Council unanimously referred the situation in Libya, which has been ongoing since 15 February 2011 to the ICC, in resolution 1970 (2011). A warrant of arrest for Mr. Saif Al-Islam Gaddafi was issued on 27 June 2011. He is presently not in the Court's custody. Arrest warrants were also issued against Mr. Muammar Gaddafi (whose case was terminated on 22 November 2011, following his death), and Mr. Abdullah Al-Senussi (The Appeals Chamber confirmed this case to be inadmissible on 24 July 2014). Therefore, the situation currently includes one case:

- *The Prosecutor* v. *Saif Al-Islam Gaddafi,* ICC-02/04-01/15 (execution of arrest warrant pending).

(vi) *The situation in the Republic of Kenya*

On 31 March 2010, Pre-Trial Chamber II granted the Prosecutor's request for authorisation to open an investigation *proprio motu* in the situation in Kenya in relation to crimes within the jurisdiction of the Court committed between 1 June 2005 and 26 November 2009. Other cases that fall under the situation in Kenya:

- *The Prosecutor* v. *Walter Osapiri Barasa,* ICC-01/09-01/13 (execution of arrest warrant pending);
- *The Prosecutor* v. *Paul Gicheru and Philip Kipkoech Bett,* ICC-01/09-01/15 (execution of arrest warrant pending).

(vii) *The situation in Darfur, Sudan*

This situation was referred to the ICC by the United Nations Security Council by resolution 1593 on 31 March 2005. Consequently, the ICC has jurisdiction over crimes listed in the Rome Statute committed on the territory of Darfur, Sudan or by its nationals from 1 July 2002 onwards. The situation includes the following cases:

- *The Prosecutor* v. *Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman,* ICC-02/05-01/07 (execution of arrest warrant pending);
- *The Prosecutor* v. *Omar Hassan Ahmad Al Bashir,* ICC-02/05-01/09 (execution of arrest warrants pending);[599]
- *The Prosecutor* v. *Abdallah Banda Abakaer Nourain,* ICC-02/05-03/09 (execution of arrest warrant pending);
- *The Prosecutor* v. *Abdel Raheem Muhammad Hussein,* ICC-02/05-01/12 (execution of arrest warrant pending).

(viii) *The situation in the Central African Republic*

The Central African Republic ratified the Rome Statute on 3 October 2001 and referred the first situation in its territory to the ICC in December 2004. The situation includes the following cases:

- *The Prosecutor* v. *Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08;
- *The Prosecutor* v. *Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Case No. ICC-01/05-01/13.

(ix) *The situation in Uganda*

In June 2002, Uganda ratified the Rome Statute and in January 2004, it referred the situation which has been ongoing in its territory since 1 July 2002, to the ICC. The ICC, therefore, may exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Uganda or by its nationals from 1 July 2002 onwards. The situation includes the following cases:

- *The Prosecutor* v. *Dominic Ongwen,* ICC-02/04-01/15;
- *The Prosecutor* v. *Joseph Kony and Vincent Otti,* ICC-02/04-01/05 (execution of arrest warrant pending).

(x) *The situation in the Democratic Republic of the Congo*

In April 2002, the Democratic Republic of the Congo ("DRC") ratified the Rome Statute, and in April 2004 it referred the situation which has been ongoing on its territory since 1 July 2002 to the ICC. The ICC, therefore, may exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of the DRC or by its nationals from 1 July 2002 onwards. In 2016, the situation included the following cases:

- *The Prosecutor* v. *Thomas Lubanga Dyilo,* ICC-01/04-01/06 (reparation/compensation phase);
- *The Prosecutor* v. *Bosco Ntaganda,* ICC-01/04-02/06 (trial phase);
- *The Prosecutor* v. *Germain Katanga,* ICC-01/04-01/07 (reparation/compensation phase);

[599] The first arrest warrant was issued on 4 March 2009 on counts of war crimes and crimes against humanity; the second arrest warrant was issued on 12 July 2010 on counts of genocide.

– *The Prosecutor* v. *Sylvestre Mudacumura,* ICC-01/04-01/12 (execution of arrest warrant pending).

(*c*) Victims' participation in the proceedings: recent developments

One of the fundamental mandates of the ICC is the participation of victims in the judicial proceedings as well as their possibility to receive reparations in case of a conviction of an accused.

The Victims Participation and Reparations Section (VPRS) in the Registry acts as the main liaison body between victims and the ICC; a small team of lawyers and data processing specialists act as the entry point for victims' applications and liaison with the Chamber.

In 2016 alone, it received a total of 4845 applications for participation in the proceedings and/or for reparations. The largest number of applications for participation in the proceedings and for reparations received related to ongoing investigations in the situation in the Republic of Côte d'Ivoire (2268 application forms) and to the trial phase of the case against Mr. Dominic Ongwen in the situation in Uganda (2102 application forms). In lesser quantities, applications were received in the situations in Mali (142) and Georgia (94). Two hundred thirty-nine applications were received in relation to the reparations proceedings in the case against Mr. Thomas Lubanga Dyilo, also in the DRC.

In 2016, a total of 2091 new victims were authorised to participate in the trial phases of two ongoing cases. In addition, the VPRS continued to collect application forms from victims regarding both participation in the proceedings and reparations in a number of cases. The VPRS also provided observations to Chambers in ongoing reparations proceedings. It compiled and organised data relevant to reparations from thousands of applications received. The VPRS also identified experts to assist Chambers in the reparation process in different cases.

The VPRS, despite being part of the ICC Headquarters in The Hague, also actively supported victims' participation and reparations related activities in a number of situations before the ICC. Relevant activities include liaising with a range of internal and external actors aimed at building support networks for the VPRS mandate, identifying pools of relevant experts in the field, supporting victims' legal representatives and providing relevant observations to the Chambers related to judicial developments. The VPRS's field activities in reaching out to affected victims' communities focused on providing accurate information on victim participation and reparations before the ICC, conducting consultations with victims and key civil society actors, as well as preparing and, as appropriate, delivering key messages in the field in response to judicial developments.

In relation to potential new investigation proceedings, the VPRS continued the mapping of victims' communities in relevant situations. It also engaged in further developing networks of reliable local partners and contact points for potential future victim participation and/or reparations proceedings before the ICC.

Finally, a lessons-learned exercise was started in order to feed into the best practices catalogue to increase the efficiency of future processes regarding victim participation and reparations.

(*d*) Developments concerning the relationship between the ICC and the United Nations

In 2016, the Assembly of States Parties (ASP) to the Rome Statute issued the following resolutions regarding the Court's relationship with the United Nations:

In resolution ICC-ASP/15/Res.3[600] (on cooperation), the ASP:

> *Emphasized* the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation or encouraged to cooperate fully with the Court pursuant to Part 9 of the Rome Statute or a United Nations Security Council resolution, as the failure to provide such cooperation in the context of judicial proceedings affects the efficiency of the Court and stressed that the non-execution of cooperation requests has a negative impact on the ability of the Court to execute its mandate, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants (para. 1); and
>
> *Urged* States Parties to explore possibilities for facilitating further cooperation and communication between the Court and international and regional organizations, including by securing adequate and clear mandates when the United Nations Security Council refers situations to the Court, ensuring diplomatic and financial support; cooperation by all United Nations Member States and follow–up of such referrals, as well as taking into account the Court's mandate in the context of other areas of work of the Security Council, including the drafting of Security Council resolutions on sanctions and relevant thematic debates and resolutions (para. 23).

In resolution ICC-ASP/15/Res.5[601] (Strengthening the ICC and the Assembly of States Parties), the ASP:

> *Recognized* the need for enhancing the institutional dialogue with the United Nations, including on Security Council referrals (para. 26);
>
> *Also recognized* that ratification or accession to the Rome Statute by members of the United Nations Security Council enhances joint efforts to combat impunity for the most serious crimes of concern to the international community as a whole (para. 27);
>
> *Further recognized* the Security Council's call regarding the importance of State cooperation with the Court and encouraged further strengthening of the Security Council's relationship with the Court (para. 28);
>
> *Recalled* the report of the Court on the status of ongoing cooperation with the United Nations, including in the field (para. 29);
>
> *Encouraged* all United Nations Offices, funds and programmes to strengthen their cooperation with the Court, and to collaborate effectively with the Office of Legal Affairs as Focal Point for cooperation between the United Nations system and the Court (para. 30);

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[600] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifteenth session, The Hague, 14–24 November 2016 (*ICC-ASP/15/3), vol. I, part III, ICC-ASP/15/Res.3.

[601] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifteenth session, The Hague, 14–24 November 2016 (*ICC-ASP/15/5), vol. I, part III, ICC-ASP/15/Res.5.

Welcomed the presentation of the annual report of the Court to the General Assembly of the United Nations and in particular its focus on the relationship between the Court and the United Nations and also welcomed the adoption of resolution A/RES/70/264 (para. 33);

Noted with concern that, to date, expenses incurred by the Court due to referrals by the Security Council continue to be borne exclusively by States Parties, and also noted that the approved budget allocated so far within the Court in relation to the referrals made by the Security Council amount to approximately €55 million (para. 34);

Stressed that, if the United Nations is unable to provide funds for the Court to cover the expenses incurred due to referrals by the Security Council, this will, among other factors, continue to exacerbate resource pressure on the Court (para. 35);

Encouraged the Court to further engage with the relevant Sanctions Committees of the United Nations Security Council with a view to improving their cooperation and achieving better coordination on matters pertaining to areas of mutual concern (para. 37); and

Noted that all cooperation received by the Court from the United Nations is provided strictly on a reimbursable basis (para. 38).

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

In 2016, the following instruments were concluded under the auspices of the United Nations:

- Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific, Bangkok, 19 May 2016.[1]
- Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Kigali, 15 October 2016.[2]

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

1. Universal Postal Union

From 20 September to 7 October 2016, the Universal Postal Union (UPU) held its 26th Universal Postal Congress in Istanbul, Turkey. On 6 October 2016, the Congress adopted the following Acts of the Union:[3]

- Constitution of the Universal Postal Union (9th Additional Protocol);
- General Regulations of the Universal Postal Union (1st Additional Protocol);
- Universal Postal Convention and Final Protocol;
- Postal Payment Services Agreement and Final Protocol (optional agreement).

The Acts shall come into force on 1 January 2018.

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[1] Not reproduced herein. For the text of the Agreement, see *Multilateral Treaties Deposited with the Secretary-General*, chapter X.20.

[2] Not reproduced herein. For the text of the Agreement, see *Multilateral Treaties Deposited with the Secretary-General*, chapter XXVII.2.f.

[3] Not reproduced herein. For the texts of the Acts, see https://www.upu.int/en/Universal-Postal-Union/About-UPU/Acts.

2. International Criminal Court

A Memorandum of Understanding was concluded between the International Criminal Court (ICC) and the Inter-American Court of Human Rights on 15 February of 2016,[4] with a view to defining the terms of cooperation between the two courts and affording each other assistance by exchanging information and expertise inherent to the conduct of their respective mandates, subject to their respective applicable legal regimes.

On 6 August 2016 the ICC and the Kingdom of Norway concluded an Agreement on the Enforcement of Sentences of the ICC,[5] with a view to regulating matters arising from execution of sentences imposed by the Court in detention facilities made available by the Kingdom of Norway.

[4] Memorandum of Understanding between the International Criminal Court and the Intern-American Court of Human Rights, 15 February 2016, ICC-PRES/17-01-16, available at https://www.icc-cpi.int/Pages/item.aspx?name=mou_ICC_IACHR.

[5] Agreement between the Kingdom of Norway and the International Criminal Court on the enforcement of sentences of the International Criminal Court, 6 August 2016, ICC-PRES/18-02-16, available at https://www.icc-cpi.int/iccdocs/oj/Agreement_on_the_enforecement_of_sentences_with_NorwayEng.pdf.

Chapter V

DECISIONS OF THE ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS[1]

A. United Nations Dispute Tribunal

In 2016, the United Nations Dispute Tribunal ("UNDT" or "Tribunal") in New York, Geneva and Nairobi issued a total of 221 judgments. Summaries of six selected judgments are reproduced below.[2]

1. Judgment No. UNDT/2016/020 (14 March 2016): Nyasulu v. *Secretary-General of the United Nations*[3]

Non-reassignment of the applicant to new post created from his old post—No review of the suitability of the applicant for reassignment—Lack of transparency and credibility—Reinstatement or monetary compensation—Compensation for the substantive and procedural irregularities

The Applicant challenged the decision of the United Nations Mission in Liberia ("UNMIL") not to renew his fixed-term contract and to separate him from service on 9 August 2013. At the time, the Applicant was Chief Judicial Affairs Officer at the D-1 level heading the Legal and Judicial Systems Support Division ("LJSS"). He was also a rostered candidate for the D-1 position of Chief, Rule of Law.

On September 2012, the Special Representative of the Secretary-General ("SRSG") decided that the UNMIL undertake a comprehensive review of its civilian staff in line with Security Council resolution 2066 (2012) and General Assembly resolution 66/264 with a view to aligning the UNMIL's staffing structure to support the requirements of the UNMIL's mandate.

The report of the Secretary-General on the proposed restructuring of the UNMIL was reflected in the 2013/14 budget in February 2013 and submitted to the General Assembly.

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[1] For general information on the administration of justice at the United Nations, see chapter III, part A, section 16 (*n*) of this publication. In view of the large number of judgments rendered 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.

[2] The summaries provided are for illustrative purposes only and are not authoritative, representative or exhaustive. Some UNDT judgments summarized may have been overturned on appeal by UNAT. For the full list of judgments by the UNDT and the latest developments, consult the website of the Office of the Administration of Justice at https://www.un.org/en/internaljustice/.

[3] Judge Nkemdilim Izuako (Nairobi).

The report included a proposal to dissolve the LJSS Division and restructure the Rule of Law component of the UNMIL according to three thematic areas: access to justice and security, training and mentoring, and legal and policy reforms. The report proposed the creation of a Director, Rule of Law post in the Office of the Deputy SRSG, to be accommodated through the reassignment of the Applicant's post from the LJSS Division. The report further proposed the reassignment of two P-5 posts in LJSS and the redeployment of 32 posts under the proposed structure.

The Advisory Committee on Budgetary and Administrative Questions endorsed the budget proposal in April 2013. In anticipation of General Assembly approval of the budget, the UNMIL reassigned the two P-5's and the 32 other staff members and proceeded to not renew the Applicant's contract by communication of 22 May 2013 to him. The UNMIL also issued a vacancy announcement for the new D-1 Principal Rule of Law Officer. The Applicant requested management evaluation of the non-renewal decision on 20 June 2013. On 9 August 2013, the Under-Secretary-General, Department of Management informed the Applicant of his decision to uphold the decision.

The Tribunal determined that the Applicant's former post of Chief Judicial Affairs Officer effectively did not cease to exist but was reassigned to fund the new D-1 position in the office of the Deputy SRSG, Rule of Law. A comparison of the functions of the new D-1 position with the functions performed by the Applicant as Chief of the LJSS Division and taken together with the functions of the generic position of Chief Rule of Law and Security Institutions Support Office in Peacekeeping missions for which the Applicant was rostered, showed that there was a significant degree of similarity.

In the view of the Tribunal, the Respondent failed to show why he made no effort to consider reassigning the Applicant to the new position, given the latter's relevant prior professional experience as Chief of the LJSS Division and given that all other staff from his Division had been reassigned or redeployed. Neither the Applicant nor the LJSS Division which he headed posed any obstacle to any changes and reforms aimed at greater integration in the Rule of Law pillar. In fact, evidence showed that the Applicant had actively worked towards integration of the thematic issues. No comparative review or any review at all was conducted to determine the suitability of the Applicant or any of the incumbents of the reassigned posts for new positions. The Guidelines from the Field Personnel Division of the Department of Field Support which the Respondent's witnesses claimed were used to conduct the review were not produced and the Tribunal concluded they do not exist.

In the view of the Tribunal, the evidence indicated that a promise by the SRSG to conduct a fair and objective review process did not include the Applicant. There was a lack of transparency and credibility in the non-renewal decision. The UNMIL acted contrary to the Secretary-General's report attached to the 2013/2014 budget approved by the General Assembly when it ignored the intention expressed therein to leverage existing expertise, to meet priorities through existing resources and to maintain experienced staff during the transition process. The decision to not reassign the Applicant to the new position created from his old post was unlawful.

The UNDT ordered rescission of the contested decision and ordered the Respondent to reinstate the Applicant and deploy him to the next similar position as at the time of his separation. Should the Secretary-General decide, in the interest of the Organization, not to reinstate the Applicant, the UNDT set compensation in the amount of USD 74,559,

consisting of four months' net base salary at the D-1 level, and the difference, for eight months, between the Applicant's D-1 salary and his salary as a prosecutor in his home country. The UNDT also awarded the Applicant two months' net base salary of compensation for the substantive and procedural irregularities occasioned by the failure of the UNMIL to conduct a comparative review to determine his suitability for reassignment to a new position.

The judgment was appealed by the Respondent in 2016. The UNDT judgment was upheld by UNAT in Judgment 2016-UNAT-698, with the exception of the method of calculating the compensation in lieu of rescission of the non-renewal decision.[4] This element was remanded to the UNDT in order to state its reasons and relevant law for the calculation.

2. Judgment No. UNDT/2016/030 (14 April 2016): Rodriguez-Viquez v. *Secretary-General of the United Nations*[5]

Legality of the Promotions Policy—Fair, transparent and non-discriminatory application of the Promotions Policy—Criterion extraneous to the Promotions Policy—Unsubstantiated and irrelevant information led to bias and nepotism—Flawed ranking methodology—Procedural errors concretely impacted the results—No retroactive promotion—Compensation for the lost chance of promotion

The Applicant challenged the decision of the United Nations High Commissioner for Refugees ("UNHCR") not to promote him from P-4 to P-5 during the 2013 UNHCR Promotions Session (Session). The Applicant joined UNHCR as a general service staff member in 1990. After moves to several posts at GS, FS and P-levels with UNHCR, the Applicant was promoted to the P-4 level in 2007 and served as a Senior Investigation Officer, P-4, and as a Senior Resources Manager, P-5, with his personal grade being P-4. In April 2014 the Applicant was informed that he was eligible to be considered for promotion to the P-5 level during the 2013 Session and he participated in it.

UNHCR's Policy and Procedures for the Promotion of International Professional Staff Members (UNHCR/HCP/2014/2) ("Promotions Policy"), promulgated on 5 February 2014, provides that the High Commissioner is to make available a number of promotions slots to the P-4, P-5 and D-1 levels, and to award them to the most meritorious staff members based on recommendations made by a panel ("Panel") composed of senior UNHCR staff members. The Panel's recommendations are the result of three rounds of evaluations of all eligible staff members.

The Applicant passed the First Round, but his comparative ranking in the Second Round was not sufficient for him to advance to the Third Round. In October 2014 UNHCR published a list of promoted staff members, which did not include the Applicant. Upon his request for a review of his candidacy, the Division of Human Resources Management ("DHRM") provided the Applicant with a copy of his fact sheet as reviewed by the Panel, and a reiteration of the steps of the Session. The Applicant's request for recourse by the Panel was unsuccessful, and the Applicant requested management evaluation of his

[4] Judgment No. 2016-UNAT-698 (28 October 2016): *Nyasulu* v. *Secretary-General of the United Nations*.

[5] Rowan Downing (Geneva).

non-promotion in May 2015. The response by the Deputy High Commissioner provided in August 2015 upheld the decision.

The Tribunal rejected the Applicant's challenge to the legality of the Promotions Policy absent any allegation that it does not comply with a higher norm. It was not its role to examine whether a policy adopted by the Organization is well founded or appropriate. The focus of the Tribunal's review was the implementation of the Promotions Policy. To pass the First Round, a candidate must satisfy at least three out of five evaluation criteria; language proficiency, number of rotations, service in D, E or U duty stations, functional diversity and performance records. The Second Round entails a comparative assessment of candidates by the Panel members based on performance, managerial accountability and exemplary leadership qualities. The Third Round focuses on a collective review of the substantially equally meritorious candidates by the Panel based on the Second Round criteria.

The Tribunal clarified that the standard of review for whether an Organization's decision is legal is essentially the same for appointments and promotions as it is for downsizing exercises. The Tribunal determined that it had to examine whether the applicable rules were followed and applied in a fair, transparent and non-discriminatory manner. The Tribunal determined that the separate consideration of male and female candidates, allocating an equal number of slots to female and male candidates, contradicted the terms of the Promotions Policy even though it was legitimate to seek gender parity. The Promotions Policy referred to consideration of a single pool of candidates only, but made no reference to gender considerations until the very end of the process, where it is required that "[a]t grade levels where gender parity has not yet been achieved, at least 50% of the promotion slots … be awarded to substantially equally meritorious female staff".

The Tribunal noted that DHRM did not provide the Panel members with a complete version of the candidates' performance evaluations ("e-PADs") by removing the ratings provided by the supervisors, which it considered "unreliable". In the view of the Tribunal, this violated the Promotions Policy as it required that the Panel consider the candidate's e-PAD's and not an edited version of them. The Tribunal further determined that in advising the Panel members to take into account the suitability of the candidates for appointment to positions at a higher level, DHRM introduced a criterion extraneous to the Promotions Policy for consideration during the Second Round. This criterion had the potential to subvert the entire promotion exercise, introducing an operational criterion into a merit-based exercise.

In the Tribunal's view, by advising the Panel members to take into account additional information they may know about the candidates but not reflected in the documents for their review, DHRM practically invited Panel members to take into account information which might be unsubstantiated or irrelevant, and opened the door to bias and nepotism. Taking into account such information was not foreseen in the Promotions Policy which provided that the Panel members would base their assessment on the candidates' fact sheets and e-PAD's and specifically excluded unsubstantiated information.

The Tribunal found that DHRM introduced a ranking methodology that permitted the allocation of the same rank to more than one candidate, without any administrative issuance and any consideration of the impact on the candidates' consolidated rankings. This led some Panel members to engage in a *de facto* grouping exercise rather than a comparative one, without any consideration of the impact of such different methodology on

the candidates' overall rankings. Numerous and significant errors in the rankings by some Panel members were also identified. In the Tribunal's view, this raised a concern as to the reliability of the rankings and the underlying methodology of some Panel members. The Tribunal also noted excessive divergence in the rankings provided by some Panel members with regard to the same candidates. These discrepancies suggested that procedural errors concretely impacted the results, or that the comparative and ranking exercise was overall not suitable to review and assess the large number of candidates properly on the basis of the information provided and within the short time frame given.

The Tribunal found that the contested decision was unlawful and that the Applicant was deprived of a significant and real chance for promotion as a result. The Tribunal rejected his request for retroactive promotion and his claim for material and moral damages. The Tribunal also rejected his request for his candidacy to be remanded to the Organization with specific instructions for a fresh selection exercise as the Tribunal did not have the authority to make operational amendments to the Promotions Policy. The Tribunal rescinded the non-promotion decision and awarded compensation in lieu of rescission in the amount of CHF 6,000 for the lost chance of promotion.

3. Judgment No. UNDT/2016/094 (30 June 2016): Dalgamouni v. *Secretary-General of the United Nations*[6]

Non-renewal of appointment on the ground of unsatisfactory performance—Hostile work environment—Improper use of a position of influence, power or authority—Breach of the fundamental rights of the employee—Monetary compensation for health damage—Referral of the Chief to Secretary-General for accountability

The Applicant challenged a decision of the Chief of the Regional Service Centre Entebbe ("RSCE") dated 5 May 2014 to not renew her fixed-term appointment on the grounds of unsatisfactory performance. The Chief also directed the Applicant to no longer act in her professional capacity on behalf of the RSCE. Pending the rebuttal of her performance evaluation, the Applicant's contract was extended on a month-to-month basis.

In August 2014 the Chief requested the discontinuation of the Applicant's access to the UMOJA Enterprise Resource Planning ("ERP") system. In response, the Chief was informed by the UMOJA team and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo ("MONUSCO") Supervisor of Technology Operations that this required the Applicant's signature. In October 2014, the Applicant filed a complaint for abuse of authority against the Chief to the Under-Secretary-General for the Department of Field Support ("DFS"). On 1 April 2015, the United Nations Dispute Tribunal issued an order referring the matter to the Office of the Ombudsman and Mediation Services ("UNOMS") for mediation. On 22 June 2015, the Rebuttal Panel took the decision to set the Applicant's performance rating to "meets performance expectations" and on 15 July 2015 the Applicant's appointment was extended for one year. A few days later UNOMS reported that the parties were unable to resolve the matter informally. Subsequently the parties filed further submissions up until March 2016. In her final submission, the Applicant requested compensation in the amount of two years' net base salary.

[6] Judge Vinod Boolel (Nairobi).

Based on the documents before it and the hearing on the merits, the Tribunal concluded that the Applicant began experiencing professional challenges when she refused to comply with a request from her First Reporting Officer ("FRO"), the Chief, to sign a document which, in her view, she had no authority to sign. Her refusal led to the imposition of a Performance Improvement Plan ("PIP") only three months after she took up her post at the RSCE. The Applicant's Second Reporting Officer was neither involved in nor aware of the PIP. The Tribunal found that the Applicant was gradually deprived of the staff assigned to her and of her own functions and responsibilities. The Chief ceased to communicate with her. Between May and October 2014, the Applicant received only one email from the Chief. This was in stark contrast to the approximately 70 emails per month she used to receive. The evidence also indicated that the Applicant was physically isolated in a building half a kilometre away from the rest of the team and was excluded from work-related developments, meetings, and training opportunities that directly related to her responsibilities by the Chief.

The Tribunal noted that the Respondent initially submitted that the application was not receivable on grounds that it was time-barred, especially since the Applicant could not specifically identify when she was stripped of her functional responsibilities. On the merits, the Respondent's case was that the Applicant had provided no evidence to substantiate her claim that the Administration had been taking steps to "constructively dismiss her" from the Organization.

The UNDT further noted that following DFS's referral of the matter to the Office of Human Resources Management ("OHRM") for disciplinary action against the Chief, the Respondent conceded liability for the unlawful actions of the Chief harming the Applicant. This concession did not result in a meaningful settlement of the dispute between the parties. In the view of the Tribunal, the case record indicated repeated violations of the Tribunal's orders by the Respondent. Additionally, the actions of the Chief were not only condoned, but repeatedly defended as being in the interest of the Organization. The Tribunal concluded that had the Respondent exercised more diligence and circumspection, the case would not have come to litigation.

The Tribunal held that the Chief's actions towards the Applicant amounted to a clear breach of authority within the definition contained in ST/SGB/2008/5 which is "the improper use of a position of influence, power or authority against another person". The Tribunal also found that the Chief either deliberately or negligently ignored the principles governing the role of a manager or supervisor contained in the 2014 Standards of Conduct for the International Civil Service.

Having found that the Applicant's fundamental rights as an employee of the United Nations had been breached and that the breach was of such a fundamental nature as to cause considerable damage to the Applicant's health, the Tribunal awarded compensation in the amount of 20 months' net base salary. The Tribunal also referred the Chief to the Secretary-General for accountability pursuant to article 10.8 of the Statute of the Tribunal.

4. Judgment No. UNDT/2016/181 (7 October 2016): Hassanin v. *Secretary-General of The United Nations*[7]

Legal authority of the Secretary-General to terminate permanent appointments—Primary responsibility for finding alternative employment should rest with the Organization—Permanent staff on abolished posts should be assigned to a suitable post on a priority basis—Proper consideration of the Applicant's status as a representative to the Staff Council—Rescission of the decision to terminate or monetary compensation—Compensation for emotional distress

The Applicant challenged the decision to abolish his G-4 post effective 1 January 2014 and the decision of Department of General Assembly Conferences Management ("DGACM") to terminate his permanent appointment as a result. The post was abolished based on a decision of the General Assembly approving the abolition of 59 posts in the Publishing Section of the Meeting and Publishing Division of DGACM, including the Applicant's post. The Applicant received a permanent appointment in 1995. He was active in the Staff Association and some time before his post was abolished, he had been elected First Vice-President of the 45th Staff Council. On 6 January 2014, the Applicant received a letter from the DGACM notifying him of the termination of his appointment and encouraging him to apply for available positions for which he believed he had the required competencies and skills.

The Applicant applied for four positions. The Applicant was informed that his applications for two positions were submitted post deadline. His application for the third position was rejected as he was not eligible for temporary positions more than one level above his grade. With regard to the fourth position, he was informed within 48 hours after applying that based on the overall review of the applications received his application would not be considered. The Applicant argued that the impugned decisions breached General Assembly resolution 54/249, which emphasized that "the introduction of new technology should lead neither to the involuntary separation of staff nor necessarily to a reduction of staff". He further argued that the Secretary-General lacked authority to terminate his permanent appointment prior to his separation. He also took the view that the Organization breached the obligations of good faith and fair dealing by shifting the responsibility for finding alternative employment onto him contrary to staff rules 13.1(*d*) and (*e*). The Applicant also argued that he was targeted for termination because of his history of advocacy on behalf of staff against the Administration.

The Tribunal found that there was no breach of resolution 54/249 as it was limited to the biennium 2000–2001. In the view of the Tribunal, the Secretary-General has the legal authority to terminate permanent appointments per staff regulation 9.3(*a*)(i), staff rule 13.1(*a*), and staff rule 13.1(*d*) provided it is lawfully done, *i.e.*, that relevant conditions concerning preferential retention are satisfied. Under the framework envisaged by staff rules 9.6 and 13.1, it is incumbent upon the Organization to review all possible suitable posts vacant or likely to be vacant in the future, and to assign affected staff members with a permanent contract on a priority basis.

In assessing whether this was complied with, the Tribunal considered that the termination letter sent to the Applicant indicated that the Administration viewed the primary

[7] Judge Ebrahim-Carstens (New York).

responsibility for finding alternative employment as resting with the Applicant. Requiring the Applicant to apply competitively for vacant positions, let alone compete for them with non-permanent staff, was a breach of staff rule 13.1. Permanent staff on abolished posts, if they are suitable for vacant posts, should only be compared against other permanent staff, but less senior and non-permanent staff members were placed or retained in preference to the Applicant. The Tribunal therefore concluded that the Organization committed material irregularities and failed to act fully in compliance with the requirements of staff rule 13.1(*d*) and (*e*) and 9(6)(*e*).

The Tribunal found further that the Organization failed to give proper consideration to the Applicant's status as a newly elected representative to the Staff Council. The Applicant's termination was also unlawful because he did not receive proper consideration as an elected high-level official of the Staff Union. The Tribunal did not find sufficient evidence to support the claim that the Applicant's termination was influenced by any animus against him. The Tribunal ordered the rescission of the decision to terminate his permanent appointment or, alternatively, the Organization was ordered to compensate him in the amount of three years' net base salary, minus any termination indemnity paid to him upon separation. The Applicant was further awarded USD 20,000 as compensation for emotional distress.

5. *Judgment No. UNDT/2016/183 (11 October 2016): Tiefenbacher* v. *Secretary-General of the United Nations*[8]

Challenge to the decision not to select permanent staff member for alternative post—Obligation to make good faith efforts to retain permanent staff members whose posts are abolished—Non-compliance with the rules on retention of permanent staff members—Compensation for pecuniary losses

The Applicant, a former Chief of Staff and Chief of Directorate, Bureau of Management at the D-1 level on a permanent appointment, challenged the decision of the United Nations Development Programme ("UNDP") not to select him for the post of Directorate Manager, Bureau of Programme and Policy Support at UNDP. The Applicant's former post had been abolished as a result of a structural change exercise at UNDP. The Applicant had been considered for a number of vacant posts at the D-1 level as part of the exercise. UNDP conducted a desk review with regard to the contested post. No test or interviews were conducted and another person was recommended for the post. Shortly after being appointed to the post, the other person left for another position and as a result the post became vacant again. UNDP advertised the vacancy on 1 April 2015 as a regular vacancy open to internal and external applicants with a deadline of 15 April 2015.

In June 2015, the vacancy was reopened upon request of the hiring manager so as to increase the pool of candidates. The new deadline was 9 June 2015. In August, one of the three short-listed candidates withdrew from the process, leaving only the Applicant and a female candidate short-listed. The female candidate indicated to UNDP that she was considering withdrawing from the process. In August, the hiring manager requested UNDP's office of human resources management to accept two applications which were submitted late in order to have at least three candidates available for interviews. The additional female candidate was permitted to submit her application while the additional male candidate withdrew his

[8] Judge Alexander W. Hunter, Jr. (New York).

application. The other female candidate, who had indicated earlier that she might withdraw, withdrew. That left the Applicant and the one female candidate, newly added, in the running.

The Applicant and the female candidate were interviewed in late August 2015. The female candidate was recommended, and the Applicant was not. The female candidate was selected. The Applicant was informed of the decision that he was not selected in September 2015. After several temporary extensions the Applicant's permanent appointment was terminated at the end of July 2016.

The Tribunal considered whether UNDP had complied with the staff rules on retention of permanent staff. It determined that consistent with the requirements of Staff Rule 13.1(*d*) on permanent appointments, one of the purposes of a structural change exercise is finding alternative employment for staff on permanent appointments whose posts had been abolished or otherwise become unavailable. If a permanent staff member remains displaced after an exercise, UNDP was still obliged to make good faith efforts to retain the staff member. UNDP was fully aware that the Applicant was a displaced permanent staff member in need of a post; there was an available post and UNDP should have considered his suitability without opening the process to external candidates and conducting a full-scale selection exercise.

The Tribunal found that an exercise to retain a permanent staff member on a matching post under staff rule 13.1(*d*) was distinct from a regular competitive selection process open to external candidates. Staff rule 13.1(*d*) envisaged a matching exercise taking into account relevant factors (contract status, suitability, length of service, *etc.*), a process different from a competency-based interview. The Tribunal concluded that UNDP had not complied with the rules on retention of permanent staff. With regard to the allegation of bias against the Applicant, the Tribunal concluded that there was insufficient evidence to establish that the process was tainted and that the Applicant was not afforded proper priority consideration for the post under the framework established by staff rules 9.6(*e*) and 13.1(*d*) for staff members on permanent appointments whose posts are abolished.

As compensation for his pecuniary losses, the Tribunal looked at any effects of the non-selection decision and awarded the Applicant seven months' net base salary. The Tribunal took into consideration that the Applicant had lost a 50 per cent chance of being selected for the post and that, if selected, it would be reasonable to expect him to occupy the post for two years. As the Applicant did not dispute the abolition of his post and the decision to terminate his appointment, the Tribunal did not take the termination indemnity paid to the Applicant into account in determining the amount of compensation.

The Tribunal also took into account that the Applicant had suffered no pecuniary loss for the nine months he remained employed with UNDP before his termination. Given the Applicant's experience, skills, excellent performance record, relatively young age and continued efforts to find alternative employment, the Tribunal expected that he would be gainfully employed at some point in the future. The Tribunal denied a request by the Applicant for pre-judgment interest on his pecuniary damages, with interest accruing from the date each salary payment would have been made, compounded semi-annually on the grounds that his pecuniary loss pertained almost entirely to future earnings. The Tribunal found no basis for awarding the Applicant compensation for non-pecuniary damages as no evidence was adduced to substantiate the Applicant's claim of moral injury.

6. *Judgment No. UNDT/2016/204 (11 November 2016): Nakhlawi* v. *Secretary-General of the United Nations*[9]

Abolition of mandate of the post did not provide for the possibility to terminate a permanent appointment—No approval for abolishing the post—Failure to make reasonable and good faith efforts to find the Applicant an alternative post—Reinstatement of the Applicant or compensation in lieu—Award of moral damages

The application challenged the decision to terminate the Applicant's permanent appointment with the United Nations Secretariat on the basis of the alleged abolition of her post and the inability to identify another position for her.

The Applicant joined the Organization in 2001 as a general service staff member and passed the G-to-P examination in Finance in 2008. In 2009, the Applicant was granted a permanent appointment with the United Nations Secretariat. Her letter of appointment did not contain a limitation of her appointment to any particular office or department. In December 2009, the Applicant was transferred to a P-2 post as Finance Officer in the Department of Field Support. She was assigned in August 2011 to a P-3 post as Finance and Budget Officer in the Department of Management, and also placed on the rosters for "Finance and Budget Officer" and for "Program Management Officer" at the P-3 level.

Thereafter, the United Nations Interregional Crime and Justice Research Institute ("UNICRI") approached the Applicant for selection from the roster for a post of "Expert (Grant Management)" for a project at UNICRI. In response to her question whether her assignment to the project post would affect her permanent staff member status, the Applicant was advised by the Administration in July 2012 that "upon reassignment, your permanent appointment will remain unchanged" and that the post was available for a number of years and she should not worry about its duration.

The Applicant accepted the offer and assumed the functions of the post in September 2012. As the UNICRI project progressed, the Applicant was informed in July and October 2014 by the United Nations Office at Vienna ("UNOV") of the intent to abolish her post at UNICRI by the end of December 2014. In early December 2014, UNOV advised the Applicant that as the abolition of her post was imminent, it would proceed to separate her by 31 December, unless she would request Special Leave Without Pay. Shortly thereafter, UNOV informed the Applicant that her permanent appointment was not going to be terminated as neither UNOV nor UNICRI had authority to do so.

UNICRI and UNOV, which administers UNICRI, made efforts to find a suitable post for the Applicant within UNICRI and UNOV given that she held a permanent appointment. The Office for Human Resources Management ("OHRM"), which had been alerted about the Applicant's situation by both UNICRI and UNOV, made no effort to find an alternative post for the Applicant within the United Nations Secretariat at large. Instead, OHRM had informed the hiring managers of four posts for which the Applicant had applied that "due consideration" should be given to her as a permanent contract holder on a post due to be abolished.

On 5 and 22 December 2014, the Applicant requested management evaluation of what she considered the decision by UNOV to terminate her permanent appointment and

[9] Judge Rowan Downing, Presiding, Judge Teresa Bravo and Judge Goolam Meeran (Geneva).

by UNICRI not to reassign her to another function. The Management Evaluation Unit ("MEU") deemed both requests not receivable as no effective administrative decision to terminate her appointment had been taken. On 2 March 2015, OHRM submitted UNICRI's request to terminate the Applicant's permanent appointment effective 31 January 2015, based on staff regulation 9.3(*a*)(i) ("If the necessities of service require abolition of the post or reduction of the staff") to the Under-Secretary-General for Management (USG/DM) for approval. USG/DM approved the termination on 6 March 2015. Before approving the termination, USG/DM had been informed by OHRM that considerable efforts had been made to secure another appointment for the Applicant, within UNICRI or within the United Nations system, but they had been unsuccessful.

On 9 March 2015, UNOV notified the Applicant as per staff rules 9.7(*a*) (notice of termination) and 13.1(*a*) (permanent appointment) that her permanent appointment would be terminated. The Applicant's request for management evaluation of the decision was rejected by the Chef de Cabinet on 8 April 2015.

In the Tribunal's view, the Applicant's post had not been abolished as per staff rule 13.1(*d*) (abolition of post in case of permanent appointment). The UNICRI project required functions distinct from the Applicant's, which the Tribunal considered to be an abolition of mandate of the post rather than of the post. As a result, the termination did not comply with staff rule 13.1(*c*) which did not provide for the possibility to terminate a permanent appointment under such circumstances. Staff rule 13.1(*d*) on abolition of post was not applicable.

The Tribunal found that even if the ground for the termination of the Applicant's permanent appointment had legitimately been the abolition of her post, abolition required the approval of the UNICRI Board of Trustees, which had not been obtained. Absent an official document delegating the authority to abolish a post from the Board of Trustees to the Director of UNICRI, the Director acted *ultra vires* in deciding to abolish the Applicant's post. The Tribunal found that the Administration failed to discharge its obligation to make reasonable and good faith efforts under staff rules 9.6(*e*) and 13.1(*d*) to find the Applicant an alternative post within the United Nations Secretariat and misinformed the USG/DM in this regard when requesting approval for the termination.

The Tribunal also referred to its judgment UNDT/2016/102 with regard to the wide scope of the Organization's obligation to make good faith efforts to find an alternate function for a permanent staff member whose post is slated for abolition.

The Tribunal ordered the rescission of the termination decision and reinstatement of the Applicant or, alternatively, payment of three years' net base salary plus the corresponding contributions to the United Nations Joint Staff Pension Fund ("UNJSPF") as compensation in lieu. The Tribunal also awarded the Applicant USD 20,000 as moral damages for stress and anxiety over the termination and disappointment and sorrow over how she was treated. Since the Applicant's loss of employment was the result of the Organization's failure to comply with its duty to secure alternative employment for her, it was justified to award compensation in excess of the two-year limitation.

B. Decisions of the United Nations Appeals Tribunal

The United Nations Appeals Tribunal ("UNAT" or "Appeals Tribunal") issued a total of 101 judgments in 2016. The summaries of five of those judgments are reproduced below.[10]

1. Judgment No. 2016-UNAT-618 (24 March 2016): Subramanian et al. v. *Secretary-General of the United Nations*[11]

Appeal relating to a salary survey—UNDT wrongfully converted the request for an extension of time into an application—Violation of the staff member's statutory rights—UNDT judgment vacated

The Appeals Tribunal considered an appeal relating to a Comprehensive Local Salary Survey which was conducted in New Delhi, India, in June 2013. The Appeals Tribunal found that the United Nations Dispute Tribunal ("UNDT") exceeded its competence and jurisdiction and made procedural errors when it, on its own motion, converted the staff members' request for an extension of time into an application and summarily dismissed it as not receivable. By equating the request for extension of time with an application, which the applicants were not ready to file without having obtained more information, the UNDT violated the staff members' statutory rights to file an application and to have access to justice as well as their right to due process of law. Accordingly, the Appeals Tribunal vacated the UNDT judgment and remanded the matter to the UNDT with instructions to permit the staff members to file an application.[12]

2. Judgment No. 2016-UNAT-622 (24 March 2016): Aly et al. v. *Secretary-General of the United Nations*[13]

Protracted classification review process—Right to request reclassification—Second remand of the case to the Administration unviable and unfair—Award of monetary compensation

The Appeals Tribunal considered an appeal against a judgment in which the UNDT rescinded a decision of the Assistant Secretary-General for the Office of Human Resources Management (ASG/OHRM) and remanded the case to the Administration. In the context of a protracted classification review process spanning over 20 years, the ASG/OHRM, based on the recommendation of the New York General Service Classification Appeals Committee following the remand pursuant to a previous UNDT judgment, had decided to maintain the classification of the posts of staff members who undisputedly performed functions exceeding their original job descriptions during that period.

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[10] The summaries provided are for illustrative purposes only and are not authoritative, representative or exhaustive. For the full list of judgments by the UNAT and the latest developments, consult the website of the Office of the Administration of Justice at https://www.un.org/en/internaljustice/.

[11] Judge Mary Faherty, Presiding, Judge Rosalyn Chapman and Judge Richard Lussick.

[12] See *Taneja et al.* v. *Secretary-General of the United Nations,* Judgment no 2016-UNAT-628; See also *Prasad et al* v. *Secretary-General of the United Nations*, Judgment no 2016-UNAT-629; *Bhatia et al.* v. *Secretary-General of the United Nations,* Judgment no 2016-UNAT-630; *Thomas et al.* v. *Secretary-General of the United Nations,* Judgment no 2016-UNAT-631; *Jaishankar* v. *Secretary-General of the United Nations*, Judgment no 2016-UNAT-632; *Bharati* v. *Secretary-General of the United Nations*, Judgment no 2016-UNAT-633.

[13] Judge Sophie Adinyira, Presiding, Judge Mary Faherty and Judge Rosalyn Chapman.

The Appeals Tribunal affirmed the rescission by the UNDT of the decision to maintain the classification, reaffirming the right of staff members to request reclassification when the duties and responsibilities of their posts change substantially as a result of a restructuring within their office. However, the Appeals Tribunal reversed the UNDT's order to remand the case to the Administration, stating that a second remand was unviable and unfair having regard to the fact that the protracted classification review process was mainly due to the reluctance and failure of management to follow their own rules, regulations and administrative instructions. Furthermore, the majority of the applicants had already retired so a remand could not offer an effective remedy. Instead, the Appeals Tribunal awarded each appellant compensation equivalent to three years' net base salary. In light of the particularly egregious circumstances of the case and the accumulation of aggravating factors, the Appeals Tribunal found that the increased award, exceptionally exceeding the equivalent of two years' net base salary pursuant to article 9(1)(*b*) of the UNAT Statute, was justified.

3. Judgment No. 2016-UNAT-641 (24 March 2016): Chemingui v. *Secretary-General of the United Nations*[14]

Challenge to decision on lateral reassignment—Decision on lateral reassignment did not constitute a case of appointment, promotion, or termination—No basis for interlocutory appeal

The staff member filed an application before the UNDT challenging the decision to laterally reassign him and requested a suspension of action. The UNDT issued an order granting his request for suspension of action pending resolution of the matter. The Secretary-General filed an interlocutory appeal of the order. The Appeals Tribunal found that the UNDT did not "clearly exceed its competence or jurisdiction" when it temporarily suspended the administrative decision to laterally reassign the staff member as that decision did not constitute a case of "appointment, promotion, or termination" excluded from interim relief under Article 10(2) of the UNDT Statute. Accordingly, since there was no basis for an interlocutory appeal, it was dismissed as not receivable.

4. Judgment No. 2016-UNAT-661 (30 June 2016): Kalashnik v. *Secretary-General of the United Nations*[15]

Request for management evaluation—Administrative response to a request for management evaluation is not judicially reviewable—Opportunity to resolve the matter without litigation

The Appeals Tribunal affirmed the UNDT finding that the staff member's application was not receivable *ratione materiae* because a response of the Management Evaluation Unit ("MEU") to a request for management evaluation was not a judicially reviewable administrative decision. The UNDT correctly held that the MEU response did not produce direct legal consequences on the staff member's terms and conditions of appointment. Considering "the nature of the decision, the legal framework under which the decision was made, and [its] consequences", the Appeals Tribunal found that the response to a request

[14] Judge Rosalyn Chapman, Presiding, Judge Inés Weinberg de Roca and Judge Mary Faherty.

[15] Judge Rosalyn Chapman, Presiding, Judge Deborah Thomas-Felix and Judge Richard Lussick.

for management evaluation was an opportunity for the Administration to resolve a staff member's grievance without litigation and not a fresh decision.

5. *Judgment No. 2016-UNAT-706 (28 October 2016): Gallo* v. *Secretary-General of the United Nations*[16]

Non-disciplinary measure in connection with a former staff member's conduct while employed—Non-disciplinary measure was not predicated upon and limited to the existence of an ongoing employment contract—UNDT judgment partially vacated

The Appeals Tribunal held that the UNDT erred in finding that it was unlawful for the Secretary-General to issue a written reprimand in connection with a former staff member's conduct while employed. It stated that there was no requirement in the Staff Regulations or Rules providing that the Secretary-General's discretionary authority to issue a written reprimand as a non-disciplinary measure pursuant to staff rule 10.2(*b*)(i) was predicated upon and limited to the existence of an ongoing employment contract. To hold otherwise would render baseless those standards of conduct that survive active service. In addition, from a practical perspective, it would stymie the Secretary-General's ability and discretionary authority to properly manage investigations and discipline staff. The Secretary-General's authority to administer the Organization's records, including those of former staff members, and to ensure they reflect the staff member's performance and conduct during his or her period of employment, did not lapse upon the staff member's separation from service. Therefore, the Appeals Tribunal granted the appeal and vacated the UNDT judgment in part with respect to this holding and the UNDT's order to remove the reprimand from the former staff member's Official Status File.

[16] Judge Deborah Thomas-Felix, Presiding, Judge Richard Lussick and Judge Martha Halfeld.

C. Decisions of the Administrative Tribunal of the International Labour Organization[17]

The Administrative Tribunal of the International Labour Organization adopted in 2016 a total of 157 judgments at its 121st and 122nd sessions.[18] The summaries of seven of those judgments are reproduced below.

1. Judgment No. 3575 (3 February 2016): C. v. International Organization for Migration (IOM)

Discharge from service for possession of unauthorized Firearm—Disciplinary measure not based upon any rule prohibiting firearms—Possession of unauthorized firearm clearly represented a risk to the safety—Complaint dismissed

At the material time, the complainant was Deputy Chief of Mission of IOM in Kabul, Afghanistan. In the course of an investigation, it was discovered that he was in possession of an unauthorized firearm. In May 2012, the IOM Director General notified the complainant that he had decided to discharge him from service with due notice. He considered that the complainant had shown extremely poor judgement and disregard for staff security and for IOM's reputation in buying a firearm on the streets in Kabul and keeping it in his quarters in the IOM compound, which the complainant did not deny. The complainant's internal appeal was rejected and the Director General maintained the disciplinary measure. This final decision was impugned before the Tribunal.

The complainant argued, inter alia, that IOM failed to prove the content and existence of a rule or law prohibiting the purchase and possession of a firearm in the IOM compound. The Tribunal found that, as IOM did not base its dismissal decision on the breach of a specific rule or law, the proof of the existence and content of either was not required. Although there had been reference to United Nations Department for Safety and Security ("UNDSS")'s advice, its security standards and the United Nations Field Security Handbook ("UNFSH"), the Tribunal found that they were not relied upon by IOM as grounds for the disciplinary measure.

The Tribunal fully endorsed IOM's conclusion that there was sufficient evidence to establish beyond a reasonable doubt that the complainant had purchased and was in *de facto* possession of a firearm within the IOM compound. The Tribunal also found that:

> "the Director General's conclusion that the complainant exhibited extremely poor judgment which jeopardized the safety of staff members and put at risk the reputation

[17] The Administrative Tribunal of the International Labour Organization is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the staff regulations of international organizations that have recognized the competence of the Tribunal. For a list of those organizations, see http://www.ilo.org/tribunal/membership/lang--en/index.htm. 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/tribunal/lang--en/index.htm.

[18] See http://www.ilo.org/dyn/triblex/triblexmain.showList?p_lang=en&p_session_id=121 and http://www.ilo.org/dyn/triblex/triblexmain.showList?p_lang=en&p_session_id=122.

of IOM [was] well founded on the evidence. The possession of a firearm within the IOM compound clearly represented a risk to the safety of the complainant, Ms. L. and all other individuals who may have been exposed to the firearm. As correctly noted by the Director General […], the firearm could have killed or seriously injured someone if intentionally or unintentionally discharged. This is particularly true when one considers the firearm was made available to Ms. L., who had little to no firearms training outside the occasional visit to the shooting range. Furthermore, and despite the complainant's submissions to the contrary, the purchase of the firearm on the streets of Kabul risked jeopardizing the IOM's reputation. As noted by the Director General […], IOM provides humanitarian assistance and maintains a peaceful mandate in Kabul. The purchase of a firearm, on the streets, by a senior official represents a public contradiction to the broad ideals of IOM and puts its reputation at risk."

In conclusion, the Tribunal dismissed the complaint in its entirety.

2. *Judgment No. 3582 (3 February 2016): D.* v. *World Health Organization (WHO)*

Termination of appointment due to abolition of post—Unreasonable delay in internal appeal proceedings—Compensation for moral damages—Amount of damages depends on the length of the delay and its consequences—Abolition of the post must be based on objective grounds—Reasonable and timely notice of the non-renewal of a fixed-term appointment

The complainant, who held a fixed-term appointment with WHO, was informed in November 2010 that, for purely programmatic and financial reasons, her position would be abolished and that, consequently, her appointment would not be extended. Following an internal appeal, the WHO Director General decided to maintain the initial decision but to award the complainant USD 6,000 for moral injury, USD 2,000 for the excessive length of the internal appeal proceedings and a maximum of USD 3,000 in respect of the procedural costs she had incurred. She impugned that decision in the Tribunal.

The Tribunal first examined the issue of the length of the internal procedure and found that:

> "… it is obvious from the circumstances of the case that the length of the internal appeal proceedings was unreasonable in light of the Tribunal's consistent case law, since there is no indication that its protracted nature was due to wrongful procedural conduct on the part of the complainant, and the appeal body's workload on which WHO relies certainly does not justify keeping a staff member in a state of uncertainty for almost three years as to the outcome of an appeal filed with the competent body and in accordance with the applicable rules. The complainant is therefore entitled to moral damages for the defendant organization's breach of its duties of due diligence and care (see, in particular, Judgments 2522, under 7, 3160, under 16, and 3188, under 25)."

The Tribunal than dealt with the issue of the amount of the compensation for such a delay, stating that:

> "4. According to the Tribunal's case law, the amount of damages awarded for the injury caused by an unreasonable delay in processing an internal appeal depends on the length of the delay and its consequences (see Judgment 3530, under 5).
>
> Whatever the extent of the delay, its consequences naturally vary depending on the subject matter of the dispute. A delay in resolving a matter of limited seriousness in its

impact on the appellant will ordinarily be less injurious than a delay in resolving a matter which has a severe impact (see Judgment 3160, under 17).

It was particularly important that the appeal against the decision not to extend the appointment of the complainant, who was then approaching 40 years of age and who had been in the service of WHO for almost nine years, should be processed quickly, so that she might know at the earliest possible opportunity what her chances were of remaining in the Organization's service. This was essential for the next stage in her career. Without dwelling on the question of whether, as she alleges, the appeal proceedings hampered her search for a new job, the Tribunal considers that, having regard to all the circumstances of the case, the compensation of 2,000 dollars awarded under the impugned decision is not sufficient to redress the injury caused by the unusually long internal appeal proceedings. The amount of that compensation should, in fairness, be increased to 4,000 dollars. This amount compensates the complainant for all the injury resulting from the excessive length of the proceedings and from the fact that the impugned decision did not award her sufficient redress under that head."

Regarding the restructuring of the organization and the abolition of a post, the Tribunal made some general remarks:

"According to firm precedent, a decision concerning the restructuring of an international organization's services, which leads to the abolition of a post, may be taken at the discretion of its executive head and is subject to only limited review by the Tribunal. The latter must therefore confine itself to ascertaining whether the decision was taken in accordance with the rules on competence, form or procedure, whether it involves a mistake of fact or of law, whether it constituted abuse of authority, whether it failed to take account of material facts, or whether it draws clearly mistaken conclusions from the evidence. The Tribunal may not, however, supplant an organization's view with its own (see, for example, Judgments 1131, under 5, 2510, under 10, and 2933, under 10). Nevertheless, any decision to abolish a post must be based on objective grounds and its purpose may never be to remove a member of staff regarded as unwanted. Disguising such purposes as a restructuring measure would constitute abuse of authority (see Judgments 1231, under 26, 1729, under 11, and 3353, under 17)."

In the specific case before it, the Tribunal concluded that "the restructuring of the complainant's unit […] had nothing to do with the complainant's personality and was prompted solely by objective considerations related to the policy on budgetary savings and rationalization which the Organization had been forced to adopt, since maintaining the complainant's post no longer appeared to be essential for the proper functioning of the unit."

The Tribunal examined the conditions under which the termination occurred. Regarding the termination notice, the Tribunal recalled its case law "which requires international organizations to give reasonable notice of the non-renewal of a fixed-term appointment (see Judgments 2104, under 6, and 3448, under 8). This case law takes account of international organizations' specific needs and of the legitimate interests of the staff member concerned who, even if she or he in principle has no right to the renewal of her or his appointment, must be apprised of the employer's intentions early enough to be able to start looking for other employment in a timely manner (see Judgment 1617, under 2)."

The Tribunal rejected an argument according to which the failure of an organization to give timely notice results in the automatic renewal of a contract for the period of its current duration. The Tribunal explained that:

> "the protection of the legitimate interests of the staff member concerned does not mean that failure to comply with the prescribed period of notice entails the employer's loss of its right to alter a legal relationship by ending an appointment on its expiry and the tacit renewal of the appointment for a further fixed term. The aim of the [.. .] case law is achieved when the appointment is extended by the length of time needed to give the official a full period of notice (see, in particular, Judgments 2162, under 2, and 3444, under 3). Non-compliance with the notice period established by the Staff Rules will result in a tacit extension of the appointment for a further fixed term only if the Staff Rules or the contract expressly provide for this contingency or if the official concerned has received assurances to that effect from the employer in circumstances where the principle of good faith requires that they be honoured."

Another issue considered by the Tribunal was whether the complainant was entitled to a reassignment pursuant to WHO rules. The respective positions of WHO and the complainant differed on this point based on the text of the applicable rule. The Tribunal found that there was a difference between the English and the French versions of the rule and recalled that it has consistently held that "any ambiguity in the regulations or rules established by an international organisation should, in principle, be construed in favour of the staff and not of the organisation (see Judgment 3369, under 12)."

The Tribunal awarded the complainant USD 4,000 for the delay in internal procedure and for wrongly being denied the right to benefit from the provisions of the Staff Rules providing for a reassignment procedure (although the Tribunal noted that WHO did not abide by the relevant Rule, it undertook the necessary searches for another post in its service which it could propose to the complainant. The Tribunal concluded that "[t]he purpose of these provisions, which is to enable the staff member's reassignment whenever possible, was therefore served.") The Tribunal also awarded the complainant costs in the amount of USD 1,500.

3. *Judgment No. 3602 (3 February 2016): A.* v. *World Trade Organization (WTO)*

Summary dismissal for unlawful possession of weapon—Conduct in a private capacity may lead to disciplinary proceedings—Imposition of internal disciplinary sanction is independent of any related domestic proceedings—Principle of proportionality—Duty of care of the organization to seek further medical advice—remittance of the matter to the WTO for reconsideration—Award of moral damages

The complainant, a former employee of the WTO, contested the Director-General's decision to summarily dismiss him for serious misconduct. This disciplinary measure resulted from an incident which occurred on 1 December 2011. The complainant, who at that time enjoyed diplomatic status by virtue of the level of his post, was stopped by security agents at Geneva airport as he attempted to board a flight carrying items prohibited under Swiss law, namely a plastic dagger strapped to his leg, a pepper spray with no identification label tucked inside a martial arts tool and a round of rifle ammunition. The prohibited items were confiscated and he was allowed to board a later flight that same day. The WTO was notified of the incident by the Swiss authorities, who formally requested that the complainant's immunity from jurisdiction and execution be waived in view of initiating criminal proceedings. The complainant was later charged with unlawful possession of a prohibited weapon. In February 2012 he was hospitalized and subsequently submitted two medical certificates certifying that he was unfit to work. While on sick leave, the complainant was notified of

the Director-General's decision to summarily dismiss him with immediate effect for serious misconduct. When the Joint Appeals Board found that this decision was vitiated because the WTO had failed to notify the complainant of the proposed disciplinary measure and give him an opportunity to comment prior to its imposition, the Director-General accepted that recommendation, but, after having received comments from the complainant's counsel, issued a new decision applying the measure of summary dismissal.

The Tribunal rejected several grounds on which the complainant challenged the impugned decision. It rejected, inter alia, the complainant's claim that the misconduct was not proven beyond a reasonable doubt as well as his contention that the incident should not have attracted disciplinary proceedings against him because it occurred in his private capacity and was therefore not relevant to the terms of his employment with the WTO. On this point, the Tribunal found that:

> "notwithstanding that the complainant was travelling in a private capacity, his behaviour was incompatible with the rules of conduct by which an international civil servant must abide. That behaviour involved the breach of airline travel security in a manner that was incompatible with his office and duty to the WTO and that risked WTO's relationship with the Swiss authorities and its esteem and standing as an international organization. That behaviour could properly have attracted liability by way of disciplinary proceedings (see Judgment 2944, under 44–49, for example)."

The Tribunal also rejected the argument that the disciplinary sanction should not have been imposed before any level of responsibility had been determined by the Swiss judicial authorities. The complainant insisted that the case was *sub judice* and no conviction had been rendered as well as that the WTO had acted prematurely when it instituted disciplinary proceedings against him for summary dismissal, which requires proof beyond reasonable doubt, without awaiting the outcome of his trial, as no such proof existed until he was convicted. The Tribunal rejected this argument: "The imposition of an internal disciplinary sanction falls within the ambit of the Staff Regulations and Staff Rules of the WTO and is independent of any related domestic proceedings against a complainant. The disciplinary process did not have to await the outcome of the domestic judicial process."

However, the Tribunal accepted that the disciplinary sanction violated the principle of proportionality. The Tribunal recalled that in Judgment 210 it ruled that even in a case in which serious misconduct is alleged, staff rules provide a wide range of penalties and it is therefore necessary to apply the principle of proportionality to ensure that the extreme penalty of summary dismissal is applied only in the gravest cases. In that judgement, the Tribunal found that:

> "[W]hen these mitigating factors are put into the scale together with the lack of any corrupt motive and the complainant's previous good record, they cause the sentence of summary dismissal to appear out of all proportion to the degree of misbehaviour in this case."

Although the Tribunal observed that the Director-General carried out the exercise to determine proportionality by weighing all of the facts and circumstances of the alleged misconduct against the mitigating factors in favour of the complainant, the Tribunal concluded that in that exercise the complainant's health condition, as it may have impacted the complainant's behaviour on the date of the incident, was not properly considered and assessed. The Tribunal was particularly concerned with the Director-General's statement

in the impugned decision that the complainant had not established that his illness was responsible for his behaviour on that day. The Tribunal noted the following:

> "The record shows that on 10 May 2012 the complainant's physician certified that the complainant had been treated for a serious medical condition since 27 June 2011. This was before the incident of 1 December 2011. The physician confirmed this and certified that the complainant was still in May 2012 undergoing treatment but that his condition had significantly improved. The physician confirmed that diagnosis in another medical certificate of 30 July 2012. This information was provided to the Administration before the Director-General informed the complainant, by the letter of 30 November 2012, that the decision of 7 March 2012 was withdrawn and proposed again to subject him to the disciplinary measure of summary dismissal. That information was also available in the internal appeal proceedings.
>
> The Tribunal considers that in the particular circumstances the WTO had a duty of care towards the complainant that went beyond the mere statement that he had not established that his illness was responsible for his behaviour. That duty required the WTO to seek further medical advice concerning the complainant's medical condition that would have assisted it to have made a more informed assessment of a possible causal connection and consequential decision in the matter. This assessment should also have been weighed in determining proportionality. Having not done so, the impugned decision was unlawful […]. Since the WTO also did not meet its duty of care to seek further medical advice and to consider it in determining proportionality, [this] ground of the complaint is also well founded."

In the result, the impugned decision was set aside to the extent that it found that summary dismissal was a proportionate sanction. The matter was remitted to the WTO for reconsideration, and the complainant was awarded EUR 12,000 in moral damages and EUR 4,000 in costs.

4. Judgment No. 3610 (3 February 2016): A. v. Global Fund to Fight AIDS, Tuberculosis and Malaria

Lawfulness of separation agreement—A waiver of the right to contest the separation agreement does not stop the Tribunal from examining the validity of that agreement—Separation agreement signed under duress—Award of material damages and moral damages

On 29 March 2012 the complainant, a former employee of the Global Fund signed the separation agreement that was given to her during a meeting eight days earlier. She added seven conditions to the standard separation agreement, which the Global Fund accepted. She separated from service on 30 April 2012. In May 2012 she started raising concerns with the Administration at the lawfulness of the separation agreement. An appeals process followed, and at the end of that process, the Global Fund's General Manager decided not to endorse conclusions of the Appeal Board favourable to the complainant. He recalled that the complainant had waived her right to contest any matters related to her separation and therefore concluded that the appeal was irreceivable. The complainant impugned this decision before the Tribunal.

The Tribunal recalled events which preceded the conclusion of the separation agreement as follows:

"Prior to her separation, the Global Fund underwent a significant restructuring in which several employees (including the complainant) were allegedly identified as requiring support with regard to their abilities to meet the requirements expected pursuant to the Global Fund's new objectives. These employees were offered two options: continue working in the same role while agreeing to participate in a work program aimed at ensuring success in their new position (a Performance Improvement Plan or PIP); or accept a separation agreement. The complainant decided against undergoing the proposed PIP and after eight days of consideration and negotiations, she signed the separation agreement and was put on special leave with pay until the end of April 2012 when her separation came into effect."

The Tribunal then dealt with the Global Fund's objection to receivability of the complaint, which was based on the argument that the complainant had, by signing the separation agreement, waived her right to challenge either the validity or the content thereof. The Tribunal rejected this argument stating that such a waiver "does not stop the Tribunal from examining the validity of that agreement as if it is not valid, none of the clauses can be upheld."

On the substance, the Tribunal noted the options given to the complainant: "The first was to continue in her position as Senior Program Officer while agreeing to participate in a PIP designed to ensure her success in accordance with increased expectations following the restructuring. The second was to choose to leave the organization under an enhanced separation agreement." The Tribunal found that:

"[t]he complainant was not eligible to be put on a PIP as she had consistently met the expected levels of performance. As participation in a PIP was not an available option for the complainant under the regulations, it should not have been offered as an alternative to signing a separation agreement. In doing this, the Global Fund created undue pressure on the complainant. Consequently, the separation agreement signed by the complainant on 29 March 2012 is not valid and must be set aside on the grounds that the complainant signed it under duress."

The Tribunal further explained that:

"This is particularly so as the PIP could result in the complainant's separation from service […]. The Global Fund objects that as the complainant could challenge the decision to place her on a PIP, it cannot be considered that she signed the separation agreement under duress. The objection is not convincing. Every unlawful action vitiating consent, by its very nature, can be challenged, but even if it is not challenged this does not exclude the possibility that the consent may be vitiated. It must be noted that the lawfulness of the decision to offer the PIP was not considered to be settled but was a fundamental element of the process which led to the separation agreement. The complainant's consent was vitiated by the fact that if she did not sign the separation agreement, she would have had to go through the PIP for which she was not eligible. Therefore, the Tribunal considers that the Global Fund imposed undue pressure which persuaded the complainant to consent to the separation agreement."

Furthermore:

"The Tribunal recognizes that international organizations have the discretion to manage their performance management objectives but highlights that they must do so using the tools they have in the manner in which they are designed. In the present case, the Global Fund used a tool (the PIP) which is explicitly designed to correct identified

underperformance, to address an issue of potential future underperformance. The Tribunal finds the misuse of the PIP to be an abuse of authority which rendered the process non-transparent and arbitrary, as according to the defendant's allegations the option of going through the PIP could be offered indistinctly to each employee."

Based on the above reasoning, the Tribunal decided to set aside the separation agreement and the impugned decision as well as that the complainant should keep the sums paid to her in accordance with the separation agreement (approximately CHF185,000) and that, in addition, she should be paid material damages for the loss of income and loss of career opportunity in the amount equivalent to three months' gross salary in accordance with the rate of her last salary payment. For the abuse of power and the violation of the Global Fund's duty of care stemming from the unlawful acts leading to the complainant's separation, the Tribunal awarded the complainant moral damages in the amount of CHF 50,000. The complainant was also entitled to costs in the amount of CHF 1,000.

5. Judgment No. 3652 (6 July 2016): P. (Nos. 1 and 2) v. *Food and Agriculture Organization of the United Nations (FAO)*

Nationality criteria in selection process—Nationality is only to be taken into account when candidates are equally well qualified—Lack of transparency in the early stages of the selection process—Award of material damages and moral damages

The complainant, a French national, held a fixed-term appointment with FAO. In June 2010 the FAO issued a vacancy announcement at grade P-4. The complainant applied for this post. Although she was initially selected for an interview, she was then told that she would not be interviewed because of her nationality. As she protested, she was later interviewed, but was not selected for the post. She applied to another P-4 vacancy issued in December 2010, but was not invited to an interview. The complainant appealed internally both final decisions on the selection in those two vacancies. The appeals were heard by the Appeals Committee, which found that the first selection was flawed because it had been disturbed by the criterion of geographic distribution, and that in the second, the complainant should be compensated as she was excluded from consideration from the start of the selection process due to her nationality. The Director-General rejected both appeals in their entirety. The complainant impugned these decisions before the Tribunal by two separate complaints that were joined by the Tribunal.

The Tribunal first recalled that:

"The Tribunal's case law has it that a staff appointment by an international organisation is a decision that lies within the discretion of its executive head. Such a decision is subject to only limited review and may be set aside only if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some material fact was overlooked, or if there was abuse of authority, or if a clearly wrong conclusion was drawn from the evidence (see Judgment 3537, under 10). Nevertheless, anyone who applies for a post to be filled by some process of selection is entitled to have her or his application considered in good faith and in keeping with the basic rules of fair and open competition. That is a right which every applicant must enjoy, whatever her or his hope of success may be (see, inter alia, Judgment 2163, under 1, and the case law cited therein, and Judgment 3209, under 11). It was also stated that an organisation must abide by the rules on selection and, when the process proves to be flawed, the Tribunal can quash any resulting appointment, albeit on the understanding that the

organisation must ensure that the successful candidate is shielded from any injury which may result from the cancellation of her or his appointment, which she or he accepted in good faith (see, for example, Judgment 3130, under 10 and 11)."

Having quoted relevant FAO provisions, the Tribunal determined that "the Director-General's discretion to appoint staff members must be exercised in accordance with [those] provisions and the general principles of law governing the international civil service, as discretion must be exercised within the bounds of legality."

The Tribunal then stated that:

"12. The [relevant] provisions of the Constitution, which has paramount force, and the Tribunal's case law on these provisions mandate that the overriding consideration for appointment to professional posts is whether a candidate meets the criteria set out for the post as advertised and her or his appointment is meritorious in a manner that secures the highest standards of efficiency, competence and integrity. The [Professional Staff Selection Committee] may however recommend the waiver of an essential qualification but must state the compensating grounds on which the candidate is recommended. The authority to grant the waiver, which may include the waiver of academic qualifications, country membership, experience and language, among others, is retained by the Director-General. Where candidates are equally well qualified, preference should be given to an internal candidate, and, reciprocally, to applicants from the United Nations or from other specialized agencies which are brought into relationship with the FAO. This, as well as nationality and geographic distribution, gender and such preferences or considerations would be taken into account only where candidates were 'equally well qualified' or 'evenly matched' on experience and qualifications, as the advertised post requires. They are not taken into consideration where there is 'a significant and relevant difference between the candidates.'"

The Tribunal also recalled its Judgments 2712, under 5 and 6, and 2392, under 9, in which it determined that the criteria of geographical distribution, nationality or gender, can be taken into consideration only if the candidates are "of equal merit" or "equally matched".

The Tribunal reconfirmed that "[t]he stated principle is that the nationality of a country that was non-represented or under-represented in the geographic distribution of staff members is only to be taken into account when candidates are equally well qualified. It was in error that qualifications, nationality and geographic distribution were accorded equal weight at that early stage of the process … ."

Furthermore, the Tribunal shared the concern expressed by the Appeals Committee regarding the lack of transparency in the selection process because records of the scores from the interviews were not available.

"This, in the Tribunal's view, reflects a serious flaw in the early stages of the selection process. The scores from the interview stage of the selection process were critically important to assist in the determination whether the paramount consideration for selection secured the highest standards of efficiency, technical competence and integrity. They were also necessary to assist in the determination whether the candidates were equally well qualified, so that as an internal candidate, the complainant should have benefitted from that or the gender preference. With the reports from the subsequent stages of the selection process, those scores could have assisted to explain why the complainant was placed second in the two preliminary submissions and why that changed to third in the final submission that was transmitted to the PSSC [Professional Staff Selection

> Committee] […]. They could also have assisted to explain to the PSSC that paramount consideration was accorded to the qualifications required in the vacancy announcement; whether the candidates were equally well qualified or otherwise, and, ultimately, whether the complainant should have had the benefit of any preference. They could also have assisted to confirm these same matters for the Appeals Committee in the internal appeal, and for the Tribunal on this complaint."

The Tribunal, in relation to both complaints determined that the complainant was not entitled to damages for loss of salary and allowances at the P-4 grade, as there were other candidates for the post and what she had was an expectation that she might be selected. The Tribunal ordered that the FAO pay the complainant a total of EUR 30,000 for material damages for both complaints, EUR 30,000 in moral damages and a total of EUR 2,000 in costs.

6. Judgment No. 3671 (6 July 2016): D. (No. 2) v. International Telecommunication Union (ITU)

Cause of action before the Tribunal to challenge the Service Orders—Service Orders were adopted by an unlawful procedure due to failure to consult with the staff association—no entitlement to moral damages as the complainant acted in the capacity of staff representative

The complainant, acting in her capacity as a "staff member, elected member of a staff association and member of the Staff Council", challenged internally two Service Orders that the ITU published in January 2013. The first of these service orders informed the staff of a number of amendments to the Staff Rules. In particular, the new staff rule 8.3.1(*a*), concerning associations and clubs of staff members, provided that "any official contacts and discussions concerning questions [relating to staff welfare and administration and policy on salaries and related allowances] shall be effected solely by the Staff Council, which shall be the sole representative body recognized for that purpose". The second Service Order was entitled "Criteria and conditions for the recognition of staff associations and clubs, granting of resources and facilities to such associations and clubs". Her internal appeal was rejected by the Secretary-General and the complainant impugned before the Tribunal not only the decision to reject the appeal but also the two Service Orders.

The ITU argued that the challenge to the first Service Order was out of time since that text merely reaffirmed a "long-standing principle embodied in the Staff Regulations and Staff Rules", and was hence irreceivable before the Tribunal. The Tribunal found the ITU's plea based on an alleged time bar unfounded for the following reasons:

> "As indicated by its title, 'Amendments to the Staff Rules', this service order informed the staff of the adoption of new provisions which had been incorporated into the Staff Rules. The ITU can therefore hardly contend that they merely reaffirmed rules which were already in force. Indeed it is hard to see why the ITU should have felt the need to introduce such amendments if they contained no new provisions. Moreover, the Tribunal notes that the service order expressly stated that these new provisions would enter into force on the date of their publication, thus confirming that they amended the existing law."

The ITU further argued that the complainant did not have a present cause of action enabling her to challenge the second Service Order. The Tribunal rejected that argument also by saying that:

"the Tribunal's case law establishes that insofar as an official alleges a failure to respect the prerogatives of a body of which she or he was a member, she or he has a cause of action which gives her or him standing to bring a complaint (see, for example, Judgment 3546, under 6). In the instant case, the complainant is a member of the Staff Council and she submits that the latter was not consulted before Service Order […] was published. In accordance with the case law, the complainant therefore has a cause of action before the Tribunal, even though this service order constitutes a regulatory measure which may ordinarily be challenged only indirectly in the context of an appeal lodged against an individual decision based on it. The complaint is therefore also receivable … ."

The complainant submitted that the Staff Council was not consulted on the Service Orders before they were published. She noted that staff rule 8.1.1(*c*), in the version applicable at that time, provided that "[e]xcept in cases of emergency, general service orders concerning questions [relating to staff welfare and administration and policy on salaries and related allowances] shall be transmitted in advance to the Staff Council for consideration and comment before taking effect". The ITU argued that this submission should be dismissed, because two members of the Staff Council participated in the working group set up to draft these Service Orders and thus the Staff Council was able to make any comments it thought fit.

The Tribunal rejected the argument of the ITU, recalling that:

"in keeping with the principle *tu patere legem quam ipse fecisti,* when a text provides for the consultation of a body representing the staff before the adoption of a decision, the competent authority must follow that procedure, otherwise its decision will be unlawful (see, for example, Judgment 1488, under 10). It is ascertained that the ITU did not consult the Staff Council on the matter of the disputed service orders. The fact relied upon by the ITU, that two members of the Council took part in the above-mentioned working group, is not a valid substitute for the consultation of the Council. The complainant is therefore right in contending that Service Orders […] were adopted by an unlawful procedure, and they must be set aside for this reason, without there being any need to examine the complainant's remaining pleas."

Although the complainant's challenge of the Service Orders had been successful, the Tribunal decided, referring to its Judgments 3258, under 5, and 3522, under 6, that she was not entitled to moral damages as she was acting in her capacity as a staff representative. She was, however, entitled to costs in the amount of EUR 3,000.

7. Judgment No. 3688 (6 July 2016): P.-M (No. 2) v. *World Health Organization (WHO)*

Abolition of post for financial reasons—Unreasonable delay in internal proceedings—Absence of genuine financial reasons to abolish the post—Breach of due process—No exceptional circumstances for ordering reinstatement—Award of moral and material damages

The complainant's complaint against WHO challenged the decision to abolish her post and to separate her from service.

The Tribunal dealt first with the claim that there was an undue delay in the internal proceedings, for which the complainant should be compensated. The Tribunal noted that forty-five months had elapsed between the filing of the Notification of Intention to Appeal against the formal decision to abolish the complainant's post, and the date on

which the Director-General issued the impugned decision. Analysing the different stages of the proceedings, the Tribunal found that WHO was not responsible for a delay of some ten months occurring after the process had commenced, which was due to discussions between the complainant and the Human Resources Management Department on her possible continued employment. However, the Tribunal noted that this was followed by an eight month period of inactivity on the complainant's internal appeal, caused by WHO's request that the Headquarters Board of Appeal ("HBA") suspend the proceedings pending the Tribunal's decision on the complainant's first complaint. Although the HBA informed WHO of its intention to pursue the review of the appeal, the Tribunal considered that it was unnecessary to suspend the proceedings for the reasons which WHO gave, as the two matters raised separate issues for determination notwithstanding the overlapping information and arguments, and that the HBA correctly decided to pursue its review to determine the lawfulness of the abolition of the complainant's post. After that, the Tribunal found that the two-year period that it took for the HBA to issue its report and recommendations was excessive. The Tribunal also noted the Director-General issued the impugned decision outside of the sixty calendar days within which the applicable staff rule mandates the Director-General to inform the complainant of her decision on the HBA's report. The Tribunal concluded that:

> "The delays in the HBA proceedings were unreasonable and were not caused by wrongful procedural conduct on the part of the complainant and there is no indication that the HBA's workload justified it. The delay before the HBA was mainly caused by the necessity to request information and documents from WHO, which should have been provided early in the process.
>
> The delay entitles the complainant to an award of moral damages for the defendant's breach of its duties of due diligence and care (see Judgments 2522, under 7, 3160, under 16, and 3188, under 25)."

The Tribunal recalled what was stated in its Judgment 3582, consideration 4, that the amount of damages awarded for the injury caused by an unreasonable delay in processing an internal appeal depends on the length of the delay and its consequences. The consequences vary depending on the subject matter of the dispute so that a delay in resolving a matter of limited seriousness in its impact on the appellant will ordinarily be less injurious than a delay in resolving a matter which has a severe impact. In the present case, the Tribunal determined that the consequences were injurious to the complainant in that the matter concerned the abolition of her post and her separation from WHO and she was in a state of uncertainty for the period of about three years.

On the substance, WHO argued that the complainant's post was abolished for programmatic and financial reasons. The complainant, however, contended that the reasons which WHO gave for the abolition of the post were baseless and that the restructuring was not a genuine one. Both parties offered various arguments to support their positions. The Tribunal concluded that:

> "Whether the post was abolished for financial reasons is a question of fact. Those facts were within the knowledge of WHO and it must show that when it advanced financial reasons as a ground for the abolition of the complainant's post this was genuine. It has not done so. In the absence of that evidence, it is determined that the complainant's post was unlawfully abolished and the claim on this ground is well founded. The result is that the impugned decision will be set be aside and the complainant will be

awarded material damages for the loss of a valuable opportunity to have her employment continued."

The Tribunal also concluded that "[i]n addition to the fact that WHO [had] presented insufficient evidence to support its assertion that the complainant's post was abolished for financial reasons, it is also evident that it failed to care for the complainant's dignity or to guard her against unnecessary personal distress and disappointment where it could have been avoided." The Tribunal explained that: "There is no reason why the complainant was informed […] in the presence of others that her post was to be abolished while she was at a meeting with the Ombudsman to explore her secondment to another department." The Tribunal found that that action was insensitive and inappropriate and that it entitled the complainant to an award of moral damages. Moreover, the Tribunal found "as the HBA correctly did, that WHO breached its duty of care to the complainant by abolishing her post while at the same time recruiting someone to fill the P-4 position the duties of which the complainant was qualified to undertake."

Furthermore, the Tribunal found that WHO failed to disclose the relevant documents to the complainant in the internal appeal proceedings and thus breached "the adversarial principle or the principle of equality of arms, which constitutes a breach of due process entitling the complainant to moral damages."

Finally, although the impugned decision was set aside and the complainant had sought to be reinstated to her post which was unlawfully abolished, the Tribunal did not order the reinstatement. Having recalled that the reinstatement of a person on a fixed-term contract can be ordered in only exceptional cases, the Tribunal found that the circumstances in the present case were not of an exceptional character. However, the Tribunal awarded the complainant EUR 90,000 in material damages for the loss of a valuable opportunity to have her contract renewed, the loss of career opportunity as a result of the unlawful abolition of her post, and for WHO's failure to make reasonable efforts to reassign her under applicable Staff Rules, and EUR 70,000 in moral damages for the affront to her dignity, the breaches of due process and of WHO's duty of care to her, and for the unreasonable delay in the internal appeal proceedings.

The Tribunal also ordered that these sums be paid within 30 days of the date of delivery of the Judgment, failing which they should bear interest at the rate of 5 per cent per annum from that date until the date of payment. The Tribunal also awarded EUR 7,000 in costs.

D. Decisions of the Administrative Tribunal of the International Monetary Fund[19]

The summaries of five judgments issued by the Administrative Tribunal of the International Monetary Fund (IMF) in 2016 are reproduced below as representing significant developments in the jurisprudence of the Tribunal.

1. *Judgment No. 2016-1 (15 March 2016): Mr. J. Prader* v. *International Monetary Fund*

Request to revoke currency election of pension payment—Currency election is irrevocable under the Local Currency Rules—Significant differences between section 16.3 of the Staff Retirement Plan and the Local Currency Rules as to currency election—Staff Retirement Plan should govern—Rescission of the decision—Retroactive pension payment

The Tribunal rendered a judgment on an application brought by a retired participant in the Fund's Staff Retirement Plan ("SRP" or "Plan"). The Applicant challenged the decision of the SRP Administration Committee ("Committee") denying his request to revoke his election that part of his pension be paid in the currency of the country of which he is a national and to which he repatriated following retirement.

SRP section 16.3 (Election of Other Currency for Pensions) provides an exception to the general rule that payments from the SRP shall be made in US dollars. Under circumstances specified in that Plan provision, a pension may be paid in full or in part in the local currency of the country to which the participant retires, as a national or as a permanent resident.

On 22 October 2014, the Applicant submitted a Pension Election Form, in which he designated that 75 per cent of his pension be paid in the currency of the country to which he would be repatriating (*i.e.*, in Euros) and 25 per cent in US dollars. The Applicant's pension became effective on 1 November 2014.

On 24 November 2014, the Applicant made a formal request to the Committee to void that currency election and to substitute an election of 75 per cent US dollars and 25 per cent Euros. Thereafter, on 28 November 2014, the Applicant's first pension payment was made in accordance with his currency election of 22 October 2014. On 29 November 2014, the Applicant repatriated to his home country.

The Committee denied the Applicant's request to revoke his 22 October 2014, election on the ground that the Local Currency Rules, adopted by the Committee, provide that a currency election is irrevocable except in circumstances which it held were not applicable to his case. On review, the Committee again denied the Applicant's request, stating that his currency election of 22 October 2014, had become irrevocable as of his pension effective date of 1 November 2014.

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[19] 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. The complete jurisprudence of the IMF Administrative Tribunal may be accessed electronically at http://www.imf.org/tribunal/.

In his Application to the Administrative Tribunal, the Applicant contended that his election of 22 October 2014 was "untimely, premature, not (yet) valid, and at best preliminary and revocable." (para. 45.) Applying the standard of review applicable to challenges to decisions of the SRP Administration Committee, the Tribunal considered whether the Committee had correctly interpreted the provisions of the Plan and soundly applied them to the facts of the case.

The Tribunal noted that SRP section 16.3 and the Local Currency Rules differ in significant respects, including as to the permissible time period for making a currency election and the conditions prerequisite to such an election. The Tribunal emphasized that there is a "clear hierarchy of norms in relation to the SRP and the Local Currency Rules," given that SRP section 7.2(*c*) provides that rules promulgated by the Committee "… shall not be contrary to the provisions" of the Plan. (para. 65.) "Thus, when there is a conflict between a Plan provision and a rule promulgated by the Committee," said the Tribunal, "the Plan provision must govern." (*Id.*) The Tribunal held that the consequence of this hierarchy of norms is that the Committee should start by considering the provisions of the Plan and assessing whether the relevant election was made in accordance with those provisions. In the view of the Tribunal, the Committee did "… not appear to have approached the question in this manner and, in failing to do so, failed to interpret correctly—or interpret at all—Section 16.3 and soundly apply it to the facts of [the] Applicant's case." (para. 69.)

The Tribunal emphasized that it had not been called upon to pass on the validity of the Local Currency Rules but rather to decide whether the Committee erred in holding irrevocable the Applicant's currency election in the circumstances of his case. The Tribunal identified the core issue raised by the Application as whether the Committee acted "contrary to the provisions" of the Plan by permitting the Applicant to make a currency election prior to meeting the criteria prescribed by SRP section 16.3(*a*) and then treating that election as irrevocable when the Applicant sought to cancel it following his pension effective date.

The Tribunal noted that SRP section 16.3(*b*) provides that an election "under subsection (*a*)" shall be irrevocable. Accordingly, in deciding whether the Committee erred in refusing the Applicant's request to revoke his currency election, the Tribunal first sought to determine whether the election of 22 October 2014 was an election in terms of SRP Section 16.3(*a*), that is: (*a*) whether the election was made by a retiree; (*b*) within 90 days after the pension effective date; and (*c*) whether the retiree was both a national and a resident of the country of the specified local currency or a permanent resident of that country at the time the election was made.

It was not disputed, said the Tribunal, that when the Applicant made the election of 22 October 2014, he had not yet retired; nor had he repatriated to his home country. In the circumstances, and on a plain reading of section 16.3(*a*), the Tribunal concluded that the Applicant's election of 22 October 2014, was not an election within the contemplation of that Plan provision.

In the light of its conclusion that the Applicant's currency election of 22 October 2014, was not an election made in accordance with section 16.3(*a*), the Tribunal next considered whether there was any other ground for finding the election irrevocable. The Tribunal rejected the Fund's assertion that a currency election becomes irrevocable as of the pension

effective date. Rather, the Plan establishes the pension effective date as the starting point for making a currency election.

Because a currency election becomes irrevocable under section 16.3(*b*) of the Plan only when a valid election has been made under Section 16.3(*a*), and the Fund had identified no other ground on which to hold the Applicant's currency election irrevocable, the Tribunal concluded that the Committee erred in denying the Applicant's request to revoke his currency election of 22 October 2014. The Tribunal accordingly rescinded the Committee's decision. In order to correct the effects of the rescinded decision, the Tribunal ordered that the Applicant's pension be paid 75 per cent in US dollars and 25 per cent in Euros, retroactively from his pension effective date of 1 November 2014. Additional complaints raised by the Applicant were not sustained.

2. *Judgment No. 2016-2 (21 September 2016): Mr. "KK"* v. *International Monetary Fund*

Alleged abuse of discretion in performance review decisions—Difficult supervisor-supervisee relationship—Reasonable and observable basis for the contested decisions—Fair and balanced evaluation—Work schedule modified in response to a medical restriction—Oral proceedings

The Tribunal rendered a Judgment on an Application brought by Mr. "KK", a staff member of the Fund. The Applicant's chief complaint was that his Annual Performance Review ("APR") decisions for Fiscal Year 2012 ("FY2012") and 2013 ("FY2013") represented an abuse of discretion, in particular, that they were improperly motivated by harassment and retaliation on the part of his Division Chief, hostility that the Applicant further alleged was abetted by the Deputy Division Chief and Senior Personnel Manager ("SPM").

According to the Applicant, the Division Chief engaged in physically threatening actions and yelling toward him. Although denying that he had physically threatened the Applicant, the Division Chief referred in his Grievance Committee testimony to "bad chemistry" between the two of them. Given the evidence in the record of a "particularly difficult" (para. 108) supervisor-supervisee relationship, the Tribunal scrutinized both the role that the Division Chief played in the contested APR decisions and the cogency of the evidence that supported those decisions.

In particular, the Tribunal asked whether the Applicant had established a "causal link" between the Division Chief's alleged hostility to him and the contested APR decisions. Having reviewed the record of the case, the Tribunal found that the APRs (particularly the FY2013 APR) were "not principally the work of the Division Chief but rather were the collaborative undertakings of multiple decision makers" (para. 114) and did not result from inappropriate influence by him. These facts, said the Tribunal, undercut the Applicant's assertion that his APR decisions could be attributed to ill will on the part of the Division Chief. Furthermore, the Tribunal found in the documentation of the case "cogent evidence of a reasonable and observable basis for the contested APR decisions. What is persuasive," said the Tribunal, "is the consistency of the assessments, the deliberative process by which they were undertaken, and that the ratings and comments were drawn from multiple reviewers." (para. 154.)

The Tribunal also rejected the Applicant's contention that his work was not evaluated in a fair and balanced manner, including that he was held to unreasonable standards and that the type of work to which he was assigned, and in which he had expertise,

was disfavoured by his managers. As to the contention that the Applicant was unfairly held to a standard of "absolute perfection," the Tribunal observed that the nature of the Applicant's responsibilities may have made the accuracy of his work products more salient to the evaluation of his performance than it was to the evaluation of the performance of some other staff members. "This difference," said the Tribunal, "does not mean that he was rated unfairly. The tailoring of assessment criteria to the nature of the work performed is a core responsibility of managers." (para. 138.)

The Tribunal also did not sustain the Applicant's assertion that his APR ratings were unfairly affected by the application of the Fund's policy limiting performance ratings above the "Effective" level to not more than 30 per cent of staff per department. The record showed that the process for assigning APR ratings in the Applicant's Department tracked a prescribed framework and the Applicant had not brought to light any procedural defect in the application of this process to him.

The Tribunal additionally considered the question whether the Fund failed to fulfil any duty arising from a recommendation by the Bank-Fund Health Services Department ("HSD") that the Applicant's work schedule be modified, *i.e.*, limited to 40 hours per week, in response to a health condition. The Applicant contended that his managers overworked him, notwithstanding the medical restriction, and that his APR decisions suffered as a result.

Having reviewed the evidence in the record, the Tribunal found that the Applicant's managers had taken steps to lighten his workload even before HSD advised that he was to work to a 40-hour week. Once that restriction was put in place, managers communicated amongst themselves and with the Applicant as to how to implement the medical restriction in the context of the Applicant's multiple work responsibilities and reporting relationships. In the view of the Tribunal, given the nature of the Applicant's responsibilities and the Fund's flexible work arrangements, it was reasonable for managers to respond to the limitation on the Applicant's working hours by making adjustments to his workload. The Applicant did not demonstrate that managers failed to honour the limitation on his hours or that he had raised with them any substantial deviation from it. Accordingly, the Tribunal concluded that the Applicant had not substantiated his claim that the Fund failed to fulfil a duty arising from HSD's restriction on his hours of work.

It followed, said the Tribunal, that it could not sustain the Applicant's contention that a failure by supervisors to manage his time in a sustainable way, notwithstanding the medical restriction, wrongfully affected his APR decisions. In the view of the Tribunal, the Applicant did not show that either an excessive workload or a diminution in his workload due to the medical restriction wrongfully affected the appreciation of his performance. In so concluding, the Tribunal referred to its finding of cogent evidence in the record of a reasonable and observable basis for the contested APR decisions; the Tribunal was not persuaded that those decisions would have been different in the absence of the workload-related issues that the Applicant sought to raise.

The Tribunal observed that the parties disputed how responsibility should properly be apportioned for ensuring that the medical restriction was given effect. The Fund submitted that the notification from HSD triggered an unwritten policy of giving reasonable accommodation to medical needs. Noting the value of written policies to avoid arbitrariness and promote transparent understanding of rights and responsibilities, the Tribunal commented that it was "troubled that the Fund has not identified any written protocol for

handling restrictions advised by HSD on working hours (or for other forms of reasonable workplace modifications) when a staff member's health condition requires." (para. 199.) The Tribunal emphasized that the "precise contours of the respective responsibilities of staff and managers in relation to the reasonable accommodation of health conditions is a matter for the policy-making organs of the Fund to consider in the first instance, consistent with general principles of fair treatment in the workplace." (para. 201.)

Notably, Mr. "KK" was the first case in which the IMF Administrative Tribunal convened oral proceedings, which it may hold when it "deems such proceedings useful." (Rule XIII, para. 1.) The Applicant requested both witness testimony and oral argument on the legal issues. The Tribunal denied the Applicant's request for witness testimony. The Tribunal observed: "Given the structure of the Fund's dispute resolution system and the exhaustion requirement of Article V, Section 1, of the Tribunal's Statute, it will be rare for the Tribunal to admit witness testimony in cases arising through the Grievance Committee, in the absence of a showing that such testimony would be useful to clarify a material point at issue before the Tribunal." (para. 42.) The Applicant in this case had not made such a showing. The Tribunal accordingly granted the Applicant's request for oral proceedings, limited to the legal arguments of the parties' counsel. (See Rule XIII, para. 6.) In its Judgment, the Tribunal commented that it had found the oral proceedings useful both in "clarifying the legal issues" and in "providing an opportunity to probe disputes of fact so as to enhance the legal appreciation of the record of the case." (para. 44.)

3. Judgment No. 2016-3 (31 October 2016): Ms. "M" and Dr. "M" (No. 2) v. *International Monetary Fund (Interpretation of Judgment No. 2006-6)*

Reimbursement of bank fees related to child support payments resulting from an earlier judgement—Admissibility of the request for interpretation pursuant to article XVII of the Tribunal's Statute—No basis for invoking a source of law other than the Fund's rules—Section 11.3 of the Staff Retirement Plan—Application denied

The Tribunal rendered a Judgment on an Application brought by Ms. "M" and Dr. "M", who sought to raise before the Tribunal a controversy arising out of the implementation of its earlier Judgment in Ms. "M" and Dr. "M", *Applicants v. International Monetary Fund*, Respondent, IMFAT Judgment No. 2006-6 (29 November 2006). In that Judgment, the Tribunal ordered the Fund, in accordance with section 11.3 of the Staff Retirement Plan ("SRP" or "Plan"), to make a 16⅔ per cent deduction from the prospective monthly pension payments of a Fund retiree Mr. "N" and to pay those amounts over to the Applicants in order to discharge a sum owing to them pursuant to child support orders against Mr. "N".

The Applicants contended that the payments they had received fell short of the amount due to them under the Tribunal's Judgment. They argued that although the full amount stated in the Judgment was deducted from Mr. "N"'s pension, the Applicants' German bank account was not credited with that full amount because the Applicants incurred bank fees associated with the monthly transactions paying over these sums to them. The Applicants contended that Mr. "N"'s obligation had not been fully discharged as required by the Tribunal's Judgment No. 2006-6 and that the Fund was responsible for the difference. The Fund had advised the Applicants that it was not responsible for any bank fees incurred; the Applicants sought to contest that decision.

The Tribunal addressed at the outset the Fund's contention that the Application should be dismissed as inadmissible on the grounds that the Applicants had neither challenged the legality of an "administrative act" of the Fund in terms of article II of the Tribunal's Statute nor raised an admissible request for interpretation of a judgment in terms of article XVII.

The Tribunal agreed that the implementation of a judgment is not an "administrative act" within the meaning of the Statute and that "[i]ndividual and regulatory decisions taken by the Fund in order to implement a judgment of this Tribunal do not fall within the contemplation of Article II." (para. 27.) The reason for this, said the Tribunal, is that the Tribunal's judgments are final and binding on the Fund, consistent with the universally recognized principle of *res judicata*. Furthermore, the Tribunal held, when a party to a judgment seeks to challenge as inconsistent with the essential terms of that judgment the manner in which it has been implemented, that challenge ordinarily will not be to an "administrative act" of the Fund. The Tribunal therefore concluded that the Application was not admissible in terms of article II of the Statute.

The Tribunal did conclude, however, that the Applicants had raised an admissible request for interpretation of a judgment in terms of article XVII. That provision permits the Tribunal to "interpret or correct any judgment whose terms appear obscure or incomplete, or which contains a typographical or arithmetical error." Although the Fund maintained that there was no ambiguity in the Judgment, the Tribunal observed that the gravamen of the Applicants' complaint was that implicit in Judgment No. 2006-6 was a requirement that the Fund reimburse the Applicants for bank fees incurred in crediting to their German bank account the sums deducted from Mr. "N"'s pension payments: "Inasmuch as the kernel of the controversy in this case is whether the Fund has failed to implement Judgment No. 2006-6 consistent with its terms, the Applicants seek an interpretation of that Judgment." (para. 33.) The Tribunal observed that if it were "… not able to respond when a party believes that the operative terms of a judgment are 'obscure or incomplete,' it would not be able to ensure that its judgments are given effect consistently with the Tribunal's intent. This is the essential purpose of article XVII." (para. 34.) Concluding that the Applicants had stated with sufficient particularity in what respect the operative provisions of the judgment appeared obscure or incomplete (Rule XX, para. 2), the Tribunal held that they had raised an admissible request for interpretation of Judgment No. 2006-6 in terms of article XVII.

Turning to the merits of the controversy, the Tribunal considered the Applicants' contention that implicit in Judgment No. 2006-6 was a requirement that the Fund reimburse the Applicants for bank fees associated with the crediting of monies from Mr. "N"'s pension payments to their German bank account. The Applicants raised a variety of arguments in support of this view, including that if Mr. "N" had paid the support orders (which originated under German law) directly as he should have, then he would bear responsibility for any associated transaction costs.

The Tribunal rejected this approach, noting that the facts of the case were that Mr. "N" had not paid the support orders directly. Rather, the Tribunal had ordered that they be given effect through the mechanism provided by SRP section 11.3 and the rules governing its administration. "[I]n giving effect to orders for child support and division of marital property pursuant to SRP section 11.3," the Tribunal emphasized, "it does not apply the

law of any nation but rather the internal law of the Fund." (para. 39.) The Tribunal accordingly found no basis for the Applicants to invoke a source of law other than the Fund's rules to decide the issue: "Should there be any question as to the meaning of the Tribunal's Judgment, that doubt must be resolved in favour of the Fund's internal law." (para. 41.)

The "Rules of the SRP Administration Committee under section 11.3 of the Staff Retirement Plan" deal with the question of responsibility for transfer fees: "Payment shall be effected by direct deposit in an account of the former spouse in a bank in the Washington locality or, *at the expense of such person*, to another account by wire transfer." (Emphasis added). In this case, the Applicants had directed that the payments be made to a foreign bank account. In the view of the Tribunal, it was reasonable to assimilate this provision to the circumstance of the child support orders at issue in Judgment No. 2006-6; the Tribunal had interpreted and applied elements of those same Rules in requiring that the orders be given effect through the SRP.

The Tribunal accordingly concluded that Judgment No. 2006-6 did not require that the Fund reimburse the Applicants for bank fees incurred in crediting to their German bank account the sum deducted from Mr. "N"'s pension payments. The Applicants' claim that the Fund had failed to implement Judgment No. 2006-6 consistently with its operative terms was therefore not sustained. Accordingly, the Application of Ms. "M" and Dr. "M" was denied.

4. Judgment No. 2016-4 (1 November 2016): Mr. P. Nogueira Batista, Jr. v. *International Monetary Fund*

Request for retroactive contribution to the Staff Retirement Plan—Interpretation and application of Staff Retirement Plan section 2.2(*c*)—No administrative failure to notify the Applicant of enrolment in the Plan at the time of appointment—Application denied

The Tribunal rendered a Judgment on an Application brought by a retired participant in the Fund's Staff Retirement Plan ("SRP" or "Plan") and former member of the IMF Executive Board, challenging the decision of the SRP Administration Committee ("Committee") denying his request to be permitted to contribute retroactively to the SRP from the time he first became eligible to elect participation in the Plan, that is, at the time of his initial appointment to the Executive Board in 2007.

SRP section 2.2(*c*) governs Plan participation by Executive Directors and permits them to elect enrolment within the three-month period following an appointment. It was not disputed that the Applicant did not enrol in the Plan until 2010, when he again became eligible to make such election by virtue of a second appointment to the Executive Board.

The Tribunal addressed at the outset the Applicant's request that the Tribunal "arrange an independent technical examination to verify the authenticity" of documents. The Fund opposed the request, maintaining that evidence of the enrolment eligibility notifications sent to the Applicant was "clear and credible on its face, and the Fund should not be required to prove, without any predicate, that it has not falsified documents submitted as evidence to the Tribunal." (para. 13.) The Tribunal observed that neither party had addressed the question of the Tribunal's authority under its Statute and Rules of Procedure to grant such a request but concluded that it was not necessary for it to address that question in this case: "Even if the Tribunal does have that authority, it would not be exercised unless it would be necessary for the disposition of a case." (para. 20.) In the light of the

Tribunal's assessment of the merits of the Application, it concluded that an "independent technical examination" would not be dispositive of the issues of the case and accordingly denied the Applicant's request.

Turning to the merits of the dispute, the Tribunal considered whether the Committee had correctly interpreted SRP section 2.2(*c*) and soundly applied it to the facts of the Applicant's case. It was not disputed that the Applicant had failed to meet the requirement of SRP section 2.2(*c*) to elect Plan participation within three months of his 2007 appointment; the question was whether the Committee erred in denying the Applicant's request for exception to that provision.

The Tribunal noted that the Committee had adopted a "Rule to Permit Acts to Be Performed Beyond Time Limit Under Certain Circumstances." That rule grants the Committee discretion to waive a time limit that has not been complied with "… as a result of any failure by the Employer or the Committee to notify a participant or retired participant of such time limit that the Employer or Committee is obligated to give notice of … ." The Fund maintained that only in cases of such administrative error have exceptions been granted to the three-month time limit of SRP section 2.2(*c*), a limit which serves to protect the Plan against adverse selection.

At the heart of the controversy was the Applicant's assertion that he "[did] not recall" having been given notice of the option to enrol in the Plan within three months of his appointment as Executive Director in 2007. The Fund, for its part, produced the following documentation: (*a*) Appointment Checklist, 9 April 2007; (*b*) initial enrolment notification email, 11 April 2007; (*c*) 30th-day reminder email, 9 May 2007; and (*d*) an "Enrolment Email Notification Log," listing 60th-day reminder email, 8 June 2007, and 90th-day reminder email, 1 July 2007, along with the terms "Read" and "Received" in relation to the latter reminder. As noted, the Applicant disputed the authenticity of some of this documentation.

The Tribunal observed that although Applicant asserted that he did not recall having received email notifications about SRP enrolment when he joined the Fund in 2007, he did not squarely claim that the Fund had failed to notify him of the option. Moreover, despite the Applicant's assertion that the Fund had not "establish[ed] clearly" (para. 63) that he had been notified, the Tribunal noted that it is always the applicant's burden to show error in a challenged decision.

Accordingly, the Tribunal considered whether the Applicant had met his burden of showing that he was not notified of his eligibility to enrol in the Plan when he first joined the Fund in 2007. The Tribunal took note of the following: (*a*) the Applicant did not deny receiving an Appointment Checklist in 2007 bearing his name and date of appointment which stated clearly that Executive Directors are eligible to join the Plan and must make an election to do so within three months of their appointment; (*b*) the Applicant had not drawn to the Tribunal's attention any basis to doubt the authenticity of the email documentation produced by the Fund other than his own asserted lack of recall and the fact that the Committee initially had informed him that it could not find any of the four emails but later asserted that it had retrieved two of the four; and (*c*) that it must be accepted that the Applicant became aware of the option to enrol in the Plan at the latest when he joined the Fund as an Executive Director for a second time in 2010; there was no evidence that the Applicant raised at that time the question of his not having been notified in 2007 of

his eligibility to elect Plan participation or the question whether he could be permitted retroactive participation.

All of these facts, said the Tribunal, supported the conclusion that the Committee did not err when it decided that there had been no administrative error in terms of a failure to notify the Applicant of his option to enrol in the Plan at the time of his 2007 appointment that would justify granting his request for retroactive participation.

Having concluded that the Applicant had not established administrative error on the part of the Fund, the Tribunal considered whether the Applicant had presented any other basis to find error in the Committee's decision denying his request for retroactive Plan participation. The Applicant sought to invoke SRP section 3.2 and SRP section 5.1, which he contended dealt with circumstances "analogous" to his own. In the view of the Tribunal, however, the issues of the case were governed solely by SRP section 2.2(*c*) and it was clear that the Applicant's case did not fall within the additional provisions he had cited.

The Tribunal accordingly concluded that the Committee correctly interpreted the provisions of SRP section 2.2(*c*) and soundly applied them to the facts of the Applicant's case. The Application was therefore denied.

5. Judgment No. 2016-5 (4 November 2016): Mr. E. Verreydt v. *International Monetary Fund*

Deduction from separation payment of the home leave benefit—Interpretation and application of the home leave policy—Prohibition of the use of credit card rewards points to acquire home leave airline tickets—Failure to afford timely notice of the rejection of home leave certification and an effective opportunity to remedy non-compliance with the home leave policy—Rescission of the Fund's decision

The Tribunal rendered a Judgment on an Application brought by a retiree of the Fund, challenging the decision to deduct from the separation payment he received upon his retirement in 2014 the amount of the home leave benefit paid to him for 2011. That decision was taken on the ground that the Applicant had failed to comply with the Fund's home leave policy by using Bank-Fund Staff Federal Credit Union ("BFSFCU") Member Rewards Program points to acquire the airline tickets for his home leave travel. The Applicant contended that the challenged decision was either: (*a*) inconsistent with the Fund's home leave policy; (*b*) consistent with the home leave policy, but that the policy itself represented an abuse of discretion; or (*c*) in the circumstances of the Applicant's case, the decision to recover the amount of his home leave benefit for 2011 was vitiated by the Fund's failure to afford him a timely opportunity to remedy his alleged non-compliance with that policy.

The Tribunal initially considered whether the Fund had erred in interpreting the home leave policy to prohibit Applicant's use of BFSFCU points to acquire home leave airline tickets. The Applicant contended that GAO No. 17, Rev. 9, section 7.04, which states that "travel to the home leave destination using a ticket provided under a frequent flyer program, or an airline employee or similar discount program, will not qualify as home leave travel," did not preclude his use of BFSFCU points. The Applicant further argued that Staff Bulletin No. 99/19 (Usage of Points Earned from Airline, Credit Card, Hotel, and Other Similar Reward Programs) (18 August 1999) should be interpreted in the light of GAO No. 17. That Staff Bulletin states: "Awards earned through reward programs cannot be used as proof of payment for any portion of business or benefit travel for which the

Fund provides either a lump sum allowance or a standard cost entitlement payment." It defines "reward programs" to include "coupons, vouchers, points (including frequent flyer miles awarded by hotels, credit cards, or airlines), or other similar reward programs, and applies to awards earned through either personal or business-related transactions." The Fund maintained that the GAO and the Staff Bulletin should be read together, with the Staff Bulletin providing a "fuller explanation" (para. 68) of the Fund's policy on the use of benefits earned through reward programs to pay for Fund business and benefit travel.

The Tribunal resolved the dispute as to the interpretation of the written law as follows: "When presented with a question of interpretation of the Fund's internal law, the Tribunal will seek to interpret the various rules of the Fund in a manner that ensures they are consistent with one another." (para. 70.) "However," noted the Tribunal, "an interpretation cannot be placed on a rule if its text cannot reasonably be read to achieve consistency. In that case, a question will arise of which rule should take precedence." (Id.) In the view of the Tribunal, that problem did not arise in the instant case because GAO No. 17, Rev. 9, section 7.04 and Staff Bulletin No. 99/19 could reasonably be read to be consistent with one another. The Tribunal noted that Staff Bulletin No. 99/19, by its terms, "clarifies the Fund's policy on the use of benefits earned through reward programs to pay for Fund business or benefit travel" and held that, when read together, GAO No. 17 and the Staff Bulletin may reasonably be understood to disallow the Applicant's use of BFSFCU points. Accordingly, the Tribunal concluded that the Fund did not err in interpreting the home leave policy to prohibit the Applicant's use of BFSFCU points to acquire his home leave airline tickets.

The Tribunal further observed that many of the arguments that the Applicant had marshalled in support of his view that the Fund improperly interpreted and applied the home leave policy in his case were arguments more appropriately considered as part of a challenge to the rule itself. In assessing whether that rule represented an abuse of discretion, the Tribunal emphasized that its deference to the Fund's decision-making authority is at its height when it reviews regulatory decisions (as contrasted with individual decisions), especially policy decisions taken by the Fund's Executive Board. The Tribunal noted that the Applicant did not raise a challenge to a decision of the Executive Board; rather, he asserted that the management of the Fund, in promulgating further regulations, had exercised its discretion arbitrarily.

The Tribunal accordingly considered whether there was a rational relationship between the rule prohibiting the use of credit card rewards points for the purchase of home leave air travel and the objectives sought to be achieved by the revised home leave policy adopted by the Executive Board in 1993.

Having perused the legislative history, the Tribunal identified several objectives of the revised home leave policy. Those objectives included avoiding the fostering of tensions between United States and expatriate staff members. To achieve that goal, the Fund maintained, it sought to ensure that the home leave travel benefit was proportionate to the disadvantages that expatriate staff encounter. The Tribunal noted the Fund's position that if expatriate staff members were to be permitted both to purchase home leave air tickets with frequent flyer miles or other similar awards, and still receive the full cash home leave benefit, this might be seen as a disproportionate benefit. The Tribunal found support for the Fund's approach in the legislative history of the Executive Board decision.

The Tribunal further observed that the Fund's policy-making discretion extends to making choices among reasonable alternatives and that the "management of the Fund should be given leeway to determine how best to achieve its goals and objectives in the formulation of its rules and policies." (para. 88.) The question, said the Tribunal, is whether the policy bears a rational relationship to the various objectives to which it is directed. The policy prohibiting the use of BFSFCU points for the acquisition of home leave airline tickets, concluded the Tribunal, was rationally related to the objectives of the Fund that appeared on the record before the Tribunal. Moreover, the Tribunal could not sustain the Applicant's argument that the decision implemented by GAO No. 17, Rev. 9, in conjunction with Staff Bulletin No. 99/19, ran counter to the 1993 decision of the Executive Board.

Having concluded that the Fund did not err in interpreting the home leave policy to prohibit the Applicant's use of BFSFCU points to acquire home leave airline tickets, and that the policy itself did not represent an abuse of discretion, the Tribunal turned to an alternative claim for relief urged by the Applicant, namely, that the decision to recover the amount of his home leave benefit for 2011 was vitiated by the Fund's failure to afford him a timely opportunity to remedy his non-compliance with the policy.

The facts of the case were that the Applicant was first notified just before his retirement in 2014 that his home leave travel corresponding to his 2011 benefit was not in compliance with Fund policy because he had used BFSFCU points to acquire the air tickets. The record showed that the Applicant had disclosed his use of the BFSFCU points when he made the requisite certification of that travel in 2012. Furthermore, it was not disputed that the same certification had failed an audit of January 2013 but that the Applicant received no notification of that failure; the audit came to light in the course of the Grievance Committee's consideration of the case. Nor was it disputed that the Fund did not take any action to recover the amount of the 2011 benefit until the Applicant advised a staff member of the Finance Department of his use of BFSFCU points in connection with that allowance during his exit interview in July 2014 when the Fund raised with the Applicant the same issue in relation to his 2013 benefit.

On 15 July 2014, the Applicant was advised that he had three options by which to "remediate this situation": (*a*) the 2011 and 2013 home leave payments could be deducted from his separation payment; (*b*) he could submit documentation from another trip to the home leave destination for which he had "fully paid"; or (*c*) he and his spouse could travel again to the home leave destination and submit a certification for that trip prior to his upcoming separation date, which was just two weeks hence.

The Fund's rules at GAO No. 17, Rev. 9, section 12.05, provide in part: "If any discrepancies are found between the certified statements and either the supporting documentation, the staff member's Application for Home Leave Benefits or the requirements of this Order, the Treasurer's Department *shall seek to resolve such discrepancies with the staff member, e.g., through the submission of additional travel documentation*." (Emphasis added). The Tribunal noted that nearly two years passed between the time the Applicant submitted his certification showing that he had used BFSFCU points to acquire his home leave airline tickets and the time when the Fund advised him that his certification was not in compliance with GAO No. 17. It was also pertinent, said the Tribunal, that the Applicant did not conceal the fact of his use of BFSFCU points at the time of his August

2012 certification. Moreover, it was the Applicant himself who brought the same fact to the Fund's attention when the issue of his 2013 benefit was raised in his exit interview of July 2014.

In the view of the Tribunal, the Fund failed in its obligation to notify the Applicant in a timely manner of the rejection of his 2011 home leave certification and to "seek to resolve … discrepancies with the staff member," GAO No. 17, rev. 9, section 12.05, as to his compliance with the home leave travel requirements. "The consequence of the Fund's failure in this case was a material one," said the Tribunal, "which was effectively to deprive [the] Applicant of the options he would have had under the governing rules to comply with the home leave policy. This consequence was particularly acute, given that [the] Applicant was on the cusp of his retirement date when he was notified of his non-compliance." (para. 99.)

Accordingly, the Tribunal concluded that the Applicant had prevailed on his contention that the Fund failed to afford him timely notice of the rejection of his 2011 home leave certification and an effective opportunity to remedy his non-compliance with the home leave policy. On that ground, the Tribunal rescinded the Fund's decision to recover the home leave benefit paid to the Applicant in 2011 and ordered that it pay him the amount deducted from his separation payment, *i.e.*, USD 17,774, to correct the effects of that decision. Additional complaints raised by the Applicant were not sustained.

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 [State] concerning privileges and immunities of United Nations staff members regarding the recruitment of nationals of [State] by the United Nations, its Funds and Programmes and other subsidiary bodies in [State]

Privileges and immunities of United Nations officials under Article 105 of the Charter of the United Nations and article V, section 18 of the Convention on the Privileges and Immunities of the United Nations—Independence of the United Nations Secretary-General and staff members pursuant to Article 100 of the Charter—Appointment of United Nations officials in line with Articles 97 and 101 of the Charter—United Nations Staff Regulations and Rules are a complete employment code for the staff of the Organization

The Office of Legal Affairs of the United Nations presents its compliments to the Ministry of Foreign Affairs of [State] and has the honour to refer to the Note Verbale from the Diplomatic Service Corps Department of 1 June 2015 regarding the recruitment of [State] nationals by the United Nations, its Funds and Programmes and other subsidiary bodies (UN Offices) in [State], attached here for ease of reference.

The Office of Legal Affairs understands that the Government of [State] has issued Decree […] on [date] (the "Decree") regarding the recruitment and management of [State] nationals working for international organizations and Circular […] on [date] (the "Circular") regarding the implementation of the Decree. The Office of Legal Affairs notes that pursuant to the Decree and Circular, UN Offices in [State] wishing to recruit nationals of [State] must do so through recruitment agencies which have been appointed or authorized by the Ministry of Foreign Affairs. Such recruitment agencies will be responsible for selecting and introducing candidates to the UN Offices, and the UN Offices will be required to appoint one of the pre-selected candidates. The Office of Legal Affairs understands that UN Offices may recruit [State] nationals directly only if the recruitment agency is unable to select and introduce a candidate within a stipulated time period. The Office of

* This chapter contains legal opinions and other similar legal memoranda and documents.

Legal Affairs also understands that pursuant to the Decree and Circular, UN Offices and [State] nationals are required to comply with [State] labour laws. [State] nationals recruited through this procedure will also, in addition, be required to comply with the regulations of the recruitment agency.

The Office of Legal Affairs wishes to express its concern that the above legislation is not in accordance with the obligations of [State] to the United Nations and is incompatible with the status of the United Nations and its staff members established under the Charter of the United Nations (the "UN Charter").

At the outset, the Office of Legal Affairs notes that the legal framework applicable to the United Nations differs from the legal framework applicable to foreign missions accredited to [State]. Any requirements or restrictions under the 1961 Vienna Convention on Diplomatic Relations regarding the appointment of persons having the nationality of a receiving state as members of the diplomatic staff of a mission in the receiving state does not apply to United Nations officials. United Nations officials are not appointed and accredited to Member States in the same way that is analogous to the bilateral exchange and accreditation of diplomatic staff on the part of two states.

As an international organization, the United Nations and its officials have been accorded certain privileges and immunities under the UN Charter. Pursuant to Article 105, paragraph 1 of the UN Charter, "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes … and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization". In order to give effect to Article 105 of the UN Charter, the General Assembly of the United Nations adopted the Convention on the Privileges and Immunities of the United Nations on 13 February 1946 (the "General Convention") to which [State] acceded on […]. In accordance with article V, section 18 of the General Convention, officials of the United Nations are accorded certain privileges and immunities. In particular, United Nations officials shall "be immune in respect of words spoken or written and all acts performed by them in their official capacity" and "from national service obligations". It should be noted in this regard that General Assembly resolution 76 (I) provides "the granting of privileges and immunities referred to in Article V … to all members of the staff of the United Nations, with the exception of those who are recruited locally and assigned to hourly rates". Therefore, all staff members of the United Nations, irrespective of nationality, are considered officials, with the sole exception of those who are recruited locally and assigned to hourly rates.

The Office of Legal Affairs recalls that the independence of the United Nations Secretary-General and staff members is protected under the UN Charter. Article 100 of the UN Charter states that "[i]n the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other authority external to the Organization" and "[e]ach Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities". Pursuant to Article 101 of the UN Charter, "[t]he staff shall be appointed by the Secretary-General under regulations established by the General Assembly" and "[t]he 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."

On this basis, the Secretary-General, as the Chief Administrative Officer of the Organization pursuant to Article 97 of the UN Charter, is to be accorded the independence to appoint personnel based on the considerations set out under the UN Charter, irrespective of their nationality. With respect to United Nations Funds and Programmes, the head of the respective organization is responsible for the engagement and appointment of its personnel. In this regard, the Office of Legal Affairs notes that the Government has an obligation under the UN Charter not to restrict the ability of the United Nations to engage and appoint its personnel in [State] or to impose any conditions regarding their engagement.

The Office of Legal Affairs also wishes to note that the conditions of service of staff members are established exclusively by the Staff Regulations established by the General Assembly and the Staff Rules promulgated by the Secretary-General. The Staff Regulations and Rules establish a complete employment code for the staff of the Organization and include detailed provisions with regard to matters which are usually covered by national labour laws. In this regard, the Office of Legal Affairs notes that the requirement under the Decree and Circular for [State] nationals to comply with the labour laws of [State] and regulations of the recruitment agency are not in accordance with the international character of their responsibilities which is emphasised in the Staff Regulations and Rules, and the UN Charter.

In light of the above, the Office of Legal Affairs requests that the Government of [State] confirm that the Decree, Circular, and any other relevant domestic laws on the recruitment of nationals and permanent residents of [State] will not be applied to the United Nations, its Funds and Programmes and other subsidiary bodies in [State].

25 January 2016

(*b*) Note to [State] concerning privileges and immunities of United Nations staff members regarding the request by [State] of information on criminal records and annual wages of United Nations personnel in [State] and the names, identity numbers and social security insurance numbers of personnel who are nationals and permanent residents of [State]

Privileges and immunities of United Nations officials under Article 105 of the Charter of the United Nations and article V, section 18 of the Convention on the Privileges and Immunities of the United Nations—Names of United Nations officials may only within the limits of article V, section 17 of the Convention—Duty to cooperate with Member States in the proper administration of justice under Article V, section 21 of the General Convention—Employment and conditions of service under Article 101, paragraph 3 of the United Nations Charter—Comprehensive social security scheme pursuant to Staff Regulation 6.2—Availability of information on the United Nations Common System of Salaries, Allowances and Benefits to all Member States

The Office of Legal Affairs of the United Nations presents its compliments to the Ministry of Foreign Affairs of the [State] and has the honour to refer to the Notes Verbales of the Ministry of Foreign Affairs dated 7 December 2011 […], 27 October 2015 […] and 19 November 2015 […] addressed to foreign missions and international organisations

in [State]. The Office of Legal Affairs understands that the Ministry of Foreign Affairs is requesting information regarding criminal records and annual wages of United Nations personnel in [State] and the names, identity numbers and [social security] insurance registry numbers of personnel who are nationals and permanent residents of [State].

In this regard, the Office of Legal Affairs wishes to provide the following information on the applicable legal framework.

At the outset, the Office of Legal Affairs notes that the legal framework applicable to the United Nations differs from the legal framework applicable to foreign missions accredited to [State]. Any requirements or restrictions under the 1961 Vienna Convention on Diplomatic Relations regarding the appointment of persons having the nationality of a receiving state as members of the diplomatic staff of a mission in the receiving state do not apply to United Nations officials. United Nations officials are not appointed and accredited to Member States in a way that is analogous to the bilateral exchange and accreditation of diplomatic recognition on the part of two states.

As an international organisation, the United Nations and its officials have been accorded certain privileges and immunities under the United Nations Charter (the "UN Charter") which are necessary for the fulfilment of the purposes of the Organization. Pursuant to Article 105 of the UN Charter, "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes … and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization". In order to give effect to Article 105 of the UN Charter, the General Assembly of the United Nations adopted the Convention on the Privileges and Immunities of the United Nations on 13 February 1946 (the "General Convention"), to which the [State] acceded on […].

The Office of Legal Affairs notes that the Government of [State] has also confirmed the applicability of the General Convention to the United Nations, including its Funds and Programmes and other subsidiary bodies of the United Nations, pursuant to article V, paragraph 1 (*a*) of the Revised Standard Agreement between the United Nations, the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the International Civil Aviation Organization, the World Health Organization, the International Telecommunication Union, the World Meteorological Organization, the International Atomic Energy Agency, the Universal Postal Union and the Inter-Governmental Maritime Consultative Organization and the Government of [State] Concerning Technical Assistance of […] (the "Standard Agreement"). Pursuant to article V, paragraph 1 (*b*) of the Standard Agreement, the Government of [State] has also agreed to apply, in respect of the Specialized Agencies in [State], the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies which was approved by the General Assembly on 21 November 1947.

The Office of Legal Affairs wishes to note that in accordance with article V, section 18 of the General Convention, officials of the United Nations are accorded certain privileges and immunities. It should be noted in this regard that General Assembly resolution 76(I) provides "the granting of privileges and immunities referred to in Article V … to all members of the staff of the United Nations, with the exception of those who are recruited locally

and are assigned to hourly rates". Therefore, all staff members of the United Nations, irrespective of nationality, are considered officials for the purposes of the General Convention, with the sole exception of those who are both recruited locally and assigned to hourly rates and are entitled to privileges and immunities under the General Convention.

The Office of Legal Affairs notes that the only requirement under the General Convention regarding the provision of information concerning United Nations personnel to Member States is pursuant to article V, section 17 which states that "[t]he names of the officials … shall from time to time be made known to the Governments of Members." In this connection, the Office of Legal Affairs understands that the Office of the United Nations Resident Coordinator in [State] periodically provides the Government with a list of [State] staff members working for the United Nations, its Funds and Programmes in [State]. The Office of Legal Affairs understands that in addition to their names, this list also includes the office to which they are assigned, their post, as well as their date of appointment.

With respect to the information requested beyond what is provided pursuant to section 17 of the General Convention, the Office of Legal Affairs notes that the Organization is not in a position to provide such information. In relation to the criminal records of personnel, the Office of Legal Affairs notes that the Organization does not routinely collect this information and has no authority to obtain such information from national authorities. The Office of Legal Affairs wishes to reassure the Government that, in accordance with Article 101, paragraph 3 of the UN Charter, "[t]he 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." However, pursuant to article V, section 21 of the General Convention, "[t]he United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice". Accordingly, if the Government has any specific issues concerning individual United Nations personnel, the United Nations is willing to cooperate with the Government to resolve the matter in a manner consistent with the UN Charter and the General Convention.

With respect to identity numbers and insurance registry numbers of nationals and permanent residents of [State], the Office of Legal Affairs understands that this request is in connection with the requirement under the laws of [State] for local personnel to be insured under the national insurance scheme. The Office of Legal Affairs notes that United Nations staff members are insured under the Organization's own comprehensive social security scheme. Pursuant to the Staff Regulations established by the General Assembly, Regulation 6.2 provides that "[the Secretary-General shall establish a scheme of social security for the staff, including provisions for health protection … and reasonable compensation in the event of illness, accident or death attributable to the performance of official duties on behalf of the United Nations". Accordingly, it would be inconsistent with Staff Regulation 6.2 that a staff member is also required to participate in the national insurance scheme. In this regard, the Office of Legal Affairs also notes that United Nations staff members are not prohibited from voluntarily participating in their national insurance schemes as they see fit at their own expense. Where staff members voluntarily participate in their national insurance schemes, they do so in their personal capacity and the United Nations does not collect or have the relevant information requested.

With respect to annual wages, the Office of Legal Affairs notes that this information is requested on a voluntary basis in relation to a statistical study to be conducted in [State]. In this regard, the Office of Legal Affairs notes that the salaries received by United Nations staff members are in accordance with the United Nations Common System of Salaries, Allowances and Benefits, the details of which are available to all Member States, including [State]. The Office of Legal Affairs also wishes to note that staff members, who wish to participate in this study, are not prohibited from voluntarily providing this information as they see fit.

In light of the foregoing, the Office of Legal Affairs therefore respectfully requests that the Government of [State] takes appropriate steps to ensure that United Nations offices and its personnel in [State] are not compelled to provide information additional to that which is being provided by those offices pursuant to the applicable provisions of the General Convention and the Standard Agreement referred to above.

8 February 2016

(*c*) Note to [State] concerning privileges and immunities of United Nations staff members regarding interrogations in relation to an official United Nations publication

Questioning of selected United Nations personnel in connection with an official United Nations publication is contrary to the status, privileges and immunities of the Organization—Privileges and immunities of United Nations officials under Article 105 of the Charter of the United Nations and article V, section 18 of the Convention on the Privileges and Immunities of the United Nations—Independence of the United Nations Secretary-General and staff members pursuant to Article 100 of the Charter—Staff members preparing an official United Nations publication acted in their official capacity

The Office of Legal Affairs of the United Nations presents its compliments to the Ministry of Foreign Affairs of [State] and has the honour to refer to the Note Verbale dated 4 February 2016 from the United Nations Office in [State] to the Ministry of Foreign Affairs, a copy of which is attached hereto for ease of reference. The Office of Legal Affairs has the further honour to refer to the Aide-Memoire received by the United Nations on 15 February 2016 regarding the privileges and immunities of United Nations staff members.

The Office of Legal Affairs understands that the authorities are conducting an investigation into the publication "Guidebook on Debates" (the "Guidebook"), produced jointly by the United Nations Development Programme ("UNDP") and United Nations Volunteers ("UNV"). In connection with this investigation, the Office of Legal Affairs understands that several United Nations personnel, including [Name], [Name] and [Name], United Nations staff members; [Name], a United Nations volunteer; and [Name] and [Name], UNDP service contract holders, have been requested to present themselves to the [City name] City Department of the Ministry of Interior. The Office of Legal Affairs also understands that several former United Nations personnel who had been involved in the preparation of the Guidebook have also been requested to present themselves to the authorities, including [Name], former UNDP service contract holder; and [Name] and [Name], former UNDP consultants.

The Office of Legal Affairs wishes to inform the Government that the questioning of selected United Nations personnel in connection with an official United Nations publication is contrary to the status, privileges and immunities of the Organization established under the Charter of the United Nations (the "UN Charter") and other applicable legal instruments.

In this regard, the Office of Legal Affairs wishes to set out the applicable legal principles.

The Office of Legal Affairs notes that as an international organisation, the United Nations and its officials have been accorded certain privileges and immunities under the UN Charter which are necessary for the fulfilment of the purposes of the Organization. Pursuant to Article 105 of the UN Charter, "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes … and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization". These privileges and immunities are specified in the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (the "General Convention").

While [State] is not directly a party to the General Convention, it has accepted the applicability of the General Convention to the United Nations, its property, funds and assets, officials and experts on mission in [State] when it entered into the Agreement relating to the establishment of a United Nations Interim Office in [State] of [year] (the "Interim Office Agreement") with the United Nations, which provides in its article IV that the General Convention shall apply. In addition, pursuant to article IX, paragraph 1 of the Agreement between the United Nations Development Programme and the Government of [year] (the "UNDP Agreement"), the Government agreed to "apply to the United Nations and its organs, including the UNDP and UN subsidiary organs acting as UNDP Executing Agencies, their property, funds and assets, and to their officials, including the resident representative and other members of the UNDP mission in the country, the provisions of the Convention on Privileges and Immunities of the United Nations."

In accordance with article V, section 18 of the General Convention, officials of the United Nations are accorded certain privileges and immunities. In particular, officials of the United Nations shall "be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity." The Office of Legal Affairs notes that the immunity from legal process is accorded to all United Nations officials, irrespective of nationality. The General Assembly, in resolution 76 (I), approved "the granting of privileges and immunities referred to in Article V … to all members of the staff of the United Nations, with the exception of those who are recruited locally *and* are assigned to hourly rates" (emphasis added). The Office of Legal Affairs further notes that such immunity shall continue to be in force after termination of employment with the United Nations.

The Office of Legal Affairs notes that the Government had also confirmed that privileges and immunities of officials under article V of the General Convention would be applicable to all United Nations staff members, without distinction as to nationality. Pursuant to article I, paragraph (*g*) of the Interim Office Agreement, "officials" are defined as "all members of […] 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(I) of 7 December 1946"

(emphasis added). Accordingly, all staff members of the United Nations in [State], irrespective of nationality, are considered officials for the purposes of the General Convention, with the sole exception of those who are *both* recruited locally and assigned to hourly rates. The Office of Legal Affairs notes that the staff members involved in the publication of the Guidebook are not locally recruited and assigned to hourly rates and accordingly, they enjoy privileges and immunities as officials of the United Nations and continue to do so after termination of their employment with the Organization.

The Office of Legal Affairs notes that pursuant to the 1969 Vienna Convention on the Law of Treaties, which was also referred to by the Government, article 31, paragraph 1 states that "[a] treaty shall 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." In this connection, the Office of Legal Affairs recalls Article 100 of the UN Charter which states that "[i]n the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization" and that "[each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities." In this regard, the Office of Legal Affairs notes that the privileges and immunities granted to United Nations personnel are to achieve the objective under the UN Charter that such personnel may exercise their official functions independently and free from undue pressure from any Government.

The Office of Legal Affairs wishes to note that the Guidebook was published under the official mandate of the United Nations. The United Nations personnel who were involved in the publication of the Guidebook should not be subject to interrogation by the authorities of [State] with respect to the acts performed by them in their official capacity in connection with this publication.

In light of the foregoing, the Office of Legal Affairs urges the Government of [State] to take all necessary steps to ensure that the independence of the United Nations and privileges and immunities of United Nations personnel pursuant to the UN Charter and the other applicable legal instruments are respected. The Office of Legal Affairs trusts that no further requests for interviews or information will be made to any United Nations personnel regarding this matter. If the Government has specific issues concerning the publication of the Guidebook or any other materials, the Office of Legal Affairs respectfully requests that such concerns be addressed directly to the UNDP Resident Representative.

18 February 2016

(*d*) Note to [State] concerning privileges and immunities of United Nations staff members regarding the renewal of an exit visa for a United Nations official by the State of nationality

Obligation of Member States that national law not to impede staff from taking up their post of duty with the United Nations or from travelling from country to country on its business—Independence of the United Nations Secretary-General and staff members pursuant to Article 100 of the Charter—Privileges and immunities of the Organization and United Nations officials under Article 105 of the

CHARTER OF THE UNITED NATIONS—IMMUNITY FROM IMMIGRATION RESTRICTIONS AND ALIEN REGISTRATION AND TRAVEL PRIVILEGES UNDER OF ARTICLE V, SECTION 18(*D*) AND ARTICLE VII, SECTION 25 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

The Office of Legal Affairs of the United Nations presents its compliments to the Permanent Mission of [Home State] to the United Nations and has the honour to refer to the matter concerning the issuance of an exit visa to [Name], a United Nations staff member. The Office of Legal Affairs has the further honour to refer to the Note Verbale from the United Nations Office in [Home State] dated 4 February 2016 to the Ministry of Foreign Affairs of [Home State], and the Note Verbale from the United Nations High Commissioner for Refugees ("UNHCR") dated 11 February 2016 to the Permanent Mission of [Home State] to the United Nations Office in Geneva regarding this matter, copies of which are attached herewith for reference.

The Office of Legal Affairs understands that [Name], a citizen of [Home State] who is appointed as an Associate Programme Officer to the UNHCR Regional Office in [City], [Host State], had returned to [Home State] to renew her exit visa. The Office has been advised that upon her arrival in [City] on 29 January 2016, she was detained and that her passport was seized. The Office understands that she was subsequently released but her passport has not been returned. Accordingly, [Name] has been unable to return to her post in [Host State] and perform the functions that have been assigned to her by the Secretary-General.

The Office of Legal Affairs understands that the Government of [Home State] requires United Nations officials of [Home State] nationality to obtain exit visas each time they travel out of [Home State]. In accordance with the UN Charter and the applicable legal instruments set out below, this requirement shall not impede the ability of staff to take up their post of duty with the United Nations or from travelling from country to country on its business. In this regard, the Office wishes to assure the Government that the Organization is respectful of national legal and procedural requirements, including with respect to exit visas, and will endeavour to assist its staff in meeting those requirements where applicable and in a manner consistent with the status of the United Nations and its personnel. In the present case, the Office regrets any delay in [Name]'s return to renew her exit visa from her UNHCR duty station in [City], [Host State] and respectfully requests the Government to issue an exit visa to [Name] at its earliest convenience so that she may resume her work for UNHCR in [Host State] without any further delay.

In this regard, the Office of Legal Affairs has the honour to set out the applicable legal principles.

The Office of Legal Affairs notes that Article 100 of the UN Charter provides that "[i]n the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any government" and that "[e]ach Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities". The Office of Legal Affairs further notes that pursuant to paragraph 1 of Article 105 of the UN Charter, "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes". In accordance with paragraph 2 of the same Article, "… officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization". These privileges

and immunities are specified in the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (hereinafter the "General Convention").

[Home State] has recognized the applicability of the General Convention in, *inter alia,* article IX of the Basic Cooperation Agreement concluded between the United Nations Children's Fund and the Government on [Date] (the "BCA"), article IV of the Agreement between the United Nations and the Government relating to the establishment of a United Nations Interim Office in [Home State] of [Date] (the "1992 Agreement"), and article IX (1) of the Agreement between the United Nations Development Programme and the Government signed on [Date] (the "UNDP SBAA").

The Office of Legal Affairs further wishes to note that in accordance with article V, section 18(*d*) of the General Convention, officials of the United Nations, together with their spouses and dependent relatives, are immune "from immigration restrictions and alien registration". Article VII, section 25 stipulates that "[a]pplications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are traveling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel". Accordingly, the Government of [Home State] has an obligation to grant visas to officials of the United Nations in a timely manner pursuant to the express terms of the General Convention.

The above provisions make clear that once the Secretary-General, as the Chief Administrative Officer of the Organization pursuant to Article 97 of the UN Charter, has appointed officials to a United Nations office, the Office of Legal Affairs notes that the Government has an obligation under the UN Charter to facilitate the travel of those officials into or from the country to enable them to carry out their functions.

In accordance with this obligation, the Government has accepted, in the provisions of the bilateral agreements between the United Nations and the Government, that no impediment to the exit (or entry) of UN officials shall be imposed. Article X, paragraph 1(*b*) of the UNDP SBAA provides that the "Government shall take any measures which may be necessary … to grant them such other facilities as may be necessary for the speedy and efficient execution of UNDP assistance", including the "prompt issuance without cost of necessary visas, licenses or permits". In addition, paragraph 1(*d*) provides that the Government shall grant the "free movement within or *to or from* the country, to the extent necessary for proper execution of UNDP assistance" (emphasis added). Article XII of the 1992 Agreement provides that internationally-recruited officials, experts on mission and persons performing services shall be entitled to "*unimpeded access to or from the country* … to the extent necessary for the implementation of programmes of co-operation" (emphasis added). Article XVI of the BCA provides that UNICEF officials shall be entitled "to prompt clearance and issuance, free of charge, of visas, licenses or permits, where required" and "to *unimpeded access to or from [Home State]* …" (emphasis added).

As noted by the Secretary-General in paragraph 115 of his report to the 7 Session of the General Assembly (A/2364, 30 January 1953), "it is clear that Member States should not, under the provisions of the Charter, seek to interpose their passport or visa requirements in such a manner as to prevent staff from taking up their post of duty with the United Nations or from travelling from country to country on its business". As further stated by the Secretary-General in 1963, "freedom for officials to travel is one of the

most essential privileges which is necessary for the independent exercise of their functions in connection with the Organization, and for the fulfilment of the purposes of the Organization." (International Law Commission, 1967 study on "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities", paragraph 366).

The Office of Legal Affairs notes that in connection with her official functions, [Name] is required to undertake urgent missions to assist in delivering aid to persons of concern in various countries, in furtherance of the humanitarian mandate of UNHCR. In light of the above, it is clear that the Government has an obligation under international law to grant permit [Name] to travel. Accordingly, the Office of Legal Affairs urges the Government of [Home State] to take all necessary steps to promptly return the passport of [Name] and issue the necessary exit visa to facilitate her travel.

29 February 2016

(*e*) Note to [State] concerning privileges and immunities of United Nations staff members regarding a declaration of a United Nations country representative as *persona non grata*

Privileges and immunities of the Organization and United Nations officials under Article 105 of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations—No right of host States to declare United Nations officials *persona non grata* or to take equivalent action—Appointment of United Nations staff pursuant to Article 101 of the Charter of the United Nations—Member States have an obligation to respect the exclusively international character of the responsibilities of the Secretary-General and the staff pursuant to Article 100, paragraph 2 of the Charter of the United Nations

The Office of Legal Affairs of the United Nations presents its compliments to the Ministry of Foreign Affairs […] of [State] and has the honour to refer to the enclosed Note Verbale of 13 June 2016 received by the Office of the Resident Coordinator and United Nations Development Programme (UNDP) Country Representative from the Ministry advising the Resident Coordinator that the representation of [Name], Country Representative, United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) in [State], "has terminated with immediate effect" and requesting the Resident Coordinator "to arrange for [Name] to leave the country immediately". The Ministry also brings to the attention of the Resident Coordinator alleged complaints of employment irregularities concerning four additional United Nations personnel.

The Office of Legal Affairs wishes to convey the Organization's serious concern regarding the matters raised in the Note Verbale from the Ministry. The Office of Legal Affairs also respectfully wishes to recall the applicable legal framework regarding these matters as follows.

Pursuant to Paragraph 1 of Article 105 of the Charter of the United Nations (the Charter"), "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes". Pursuant to paragraph 2 of Article 105, officials of the Organization "shall similarly enjoy such

privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization".

Such privileges and immunities are specifically provided for in the Convention on the Privileges and Immunities of the United Nations (the "General Convention"), to which [State] is a party. The Office of Legal Affairs wishes to recall that the General Convention is applicable to UN Women, which is an integral part of the Organization, and to its officials, who enjoy the status of United Nations officials.

It should be noted that the General Convention neither provides for nor envisions any right for States hosting United Nations operations to declare United Nations officials *persona non grata* or to take equivalent action. This doctrine, which is detailed in article 9 of the Vienna Convention on Diplomatic Relations, applies only to bilateral relations between States. It is not applicable to officials of the United Nations who are neither representing any particular government nor are accredited to any government.

The Office of Legal Affairs wishes to recall that the Organization enjoys the right that its staff members be permitted to remain in their country of assignment to perform their official functions on behalf of the United Nations as determined by the Secretary-General. Specifically, pursuant to Article 101 of the Charter, the Secretary-General is responsible for the appointment of United Nations staff. Furthermore, pursuant to Article 100, paragraph 2 of the Charter, "each member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities". In order to fulfil the responsibilities entrusted to him by the Charter, and to protect and ensure the independence of the United Nations, the Secretary-General, in accordance with Article 100, has the right to appoint staff members and determine their length of service in the country of their assignment, as required.

Accordingly, the Office of Legal Affairs wishes to inform the Ministry that its demand that [Name] depart from [State] is at variance with the international legal obligations of [State], including those specified under the General Convention and the Charter.

In this connection, the Office of Legal Affairs wishes to advise that if the Government has any specific issues concerning [Name], the relevant information should be brought to the attention of the United Nations officially to enable the Secretary-General to make a decision as to whether any appropriate action should be taken. With respect to the alleged complaints of employment irregularities regarding the four additional United Nations personnel referenced in the Note Verbale from the Ministry, the Office of Legal Affairs wishes to recall that such issues are solely to be addressed in accordance with the applicable contractual arrangements of the individuals concerned. They are not subject to review by the authorities of Member States.

In light of the above, the Office of Legal Affairs respectfully requests the Ministry to reverse the action it has taken against [Name].

13 June 2016

(*f*) Inter-office memorandum to the Legal Counsel of a United Nations entity concerning the privileges and immunities of a staff member for civil proceedings

Status of a United Nations entity as a joint subsidiary organ of the United Nations and the Food and Agriculture Organization (FAO)—Any decision to waive immunity must be made jointly by the United Nations Secretary-General and the FAO Director-General—A waiver of immunity for civil proceedings relating a private matter which does not affect official functions is without prejudice to the interested of the United Nations

1. This is in response to your email dated 26 August 2016 requesting a waiver of diplomatic immunity in respect of [Name], Logistics Officer, P-5, concerning the civil proceedings brought against her against by her former domestic helper.

2. We understand that the civil proceedings are ongoing and that the matter was brought to your attention by a Note Verbale from the Ministry of Foreign Affairs of [State], requesting [UN entity]'s assistance in executing a decision rendered by the relevant [State] Tribunal on [date]. Your email further indicates that [Name] has appealed the decision before the [State's highest court of appeal].

3. [Name], as an official of grade P-5, enjoys diplomatic immunity pursuant to article XIII, section 31(*c*) of the Agreement of [date] regarding the Headquarters for the [Organization] (hereinafter "the Agreement"). In accordance with article XIII, section 34, of the Agreement, the privileges and immunities "are conferred in the interest of [UN entity] and not for the personal benefit of the individuals themselves".

4. As the [UN entity] is a joint subsidiary organ of the United Nations and the Food and Agriculture Organization, any decision to waive immunity must be made jointly by the Secretary-General of the United Nations and the Director-General of the Food and Agriculture Organization. Article XIII, section 34, of the Agreement provides that "[c]onsistent with Section 20 of the Convention on Privileges and Immunities of the United Nations and Section 22 of the Convention on the Privileges and Immunities of the Specialized Agencies, the immunity of an official shall be waived whenever the immunity would not impede the course of justice and can be waived without prejudice to the interests of [UN entity]". Article V, section 20 of the Convention on the Privileges and Immunities of the United Nations provides that "[t]he Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations".

5. As the aforementioned civil proceedings relate to a private matter which does not affect the official functions of [Name] and can be waived without prejudice to the interests of the United Nations, we have no objection to a waiver of the diplomatic immunity of [Name] for the limited purpose of these proceedings.

6. We therefore wish to confirm that, for the sole purpose of the civil proceedings against her former aid worker, the immunity from civil jurisdiction that [Name] enjoys under article XIII, section 31(*c*) of the Agreement has been waived by the Secretary-General of the United Nations in accordance with article V, section 20, of the Convention.

7. We understand that the Food and Agriculture Organization has reached the same determination and will communicate the decision by the Director-General of the Food and Agriculture Organization to waive [Name]'s immunity for the same purpose.

8. Please inform the Government of [State] of the Secretary-General's decision as well as [Name]. We would also be grateful if you would provide us with a copy of your communication to the Government of [State].

8 September 2016

(*g*) Note to [State] concerning privileges and immunities of United Nations staff members regarding contributions of national staff members to the national social security and pension scheme

Privileges and immunities of United Nations officials under Article 105 of the Charter of the United Nations and article V, section 18 (*b*) of the Convention on the Privileges and Immunities of the United Nations—Appointment of staff members under Article 101, paragraph 1 of the United Nations Charter by the Secretary-General "under regulations established by the General Assembly"—Comprehensive social security scheme pursuant to Staff Regulation 6.2—Staff members do not have an obligation to contribute to the national social security and pension scheme

The Office of Legal Affairs of the United Nations presents its compliments to the Permanent Mission of [State] to the United Nations and has the honour to refer to the attached letters from the Pension and Social Security Authority in [State] […] addressed to [Name], [Name], [Name], [Name], [Name] and [Name], staff members of the United Nations Development Programme (UNDP). The Office also wishes to refer to its note verbale of 24 July 2015 regarding this matter.

The Office of Legal Affairs understands that the staff members have been asked to enrol in and contribute to the national social security and pension scheme as nationals of [State]. The Office further understands that most of the abovementioned letters have been described by the [State] Pension and Social Security Authority as "persuasive action". In the particular case of [Name], we understand that she has been informed that unless she responds to the request for information from the Pension and Social Security Authority she will be subject to penalties.

In this connection, the Office of Legal Affairs respectfully wishes to recall the applicable legal framework. The United Nations, including UNDP, and its officials, have been accorded certain privileges and immunities which are necessary for the fulfilment of the purposes of the Organization. Article 105 of the Charter of the United Nations provides the general basis for such privileges and immunities. Paragraph 1 of Article 105 provides that "the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes". Paragraph 2 of the same Article provides that "officials of the Organization shall … enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization".

In order to expand on and to give effect to Article 105, the United Nations General Assembly adopted the Convention on the Privileges and Immunities of the United Nations (hereinafter the "General Convention") on 13 February 1946. [State] acceded to the General Convention on 6 [date] without reservations. Furthermore, in […],

the United Nations and [State] signed an agreement concerning Assistance by the United Nations Development Programme to the Government of [State] (the "Agreement"), which in its article IX confirms the application of the General Convention to UNDP.

Pursuant to article V, section 18 (*b*) of the General Convention, "officials of the United Nations shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations". It is well understood that this provision includes being exempted from contributing to the national social security and pension schemes.

United Nations officials are exempt from taxation on the salaries and emoluments paid to them, regardless of their nationality. This is a necessary corollary of the privileges and immunities' rationale of ensuring both the independence of officials and their freedom from external instructions, control or pressure in respect of their duties. In this regard, the General Assembly resolution 76 (I) provides "the granting of privileges and immunities referred to in articles V and VI [of the General Convention] (…) to all members of the staff of the United Nations, with the exception of those who are recruited locally and assigned to hourly rates". The Office of Legal Affairs wishes to confirm that none of the staff members referred to above is assigned to hourly rates. Therefore, all of them enjoy the exemption provided for in article V, section 18(*b*) of the General Convention.

The Office of Legal Affairs also notes that the United Nations has its own comprehensive social security scheme, as an obligatory and essential element of the status of the Organization's staff members. Paragraph 1 of Article 101 of the Charter of the United Nations provides that staff members are appointed by the Secretary-General "under regulations established by the General Assembly". Staff Regulation 6.2, as established by the General Assembly, provides that "the Secretary-General shall establish a scheme of social security for the staff, including provisions for health protection … and reasonable compensation in the event of illness, accident or death attributable to the performance of official duties on behalf of the United Nations". It would be inconsistent with Staff Regulation 6.2. for a Member State to insist that a staff member also participate in its national scheme. In this regard, however, the Office wishes to note that United Nations' staff members are not prohibited from voluntarily participating in their national scheme as they see fit and at their own expense.

The Office of Legal Affairs wishes to confirm to the Government that all the abovementioned UNDP staff members are currently enrolled in the United Nations compulsory social security system and are entitled to benefits including pension, sick leave, maternity and paternity leave, compensation in the event of illness, accident or death in official duties, as well as compensation for loss or damage to personal effects.

Pursuant to section 34 of the General Convention, [State] is under an obligation to "be in a position under its own law to give effect to the terms of [the General Convention]".

The Office of Legal Affairs therefore respectfully requests the Government to take appropriate steps to ensure that the abovementioned UNDP staff members and, more broadly, all officials of the United Nations based in [State] who are nationals or permanent residents of [State], are not compelled to enroll and contribute to national social security and pension schemes of [State]. The Office further requests that the proceedings by the Pension and Social Security Authority in [State] against those staff members be dismissed and brought to a close.

The Office of Legal Affairs wishes to note that it remains available to discuss this matter further with the relevant [State] authorities, as appropriate.

22 November 2016

(*h*) Note to [State] concerning privileges and immunities of the United Nations regarding the exemption from the payment of customs duties for the import of stamps by the United Nations Postal Administration (UNPA)

General Assembly resolutions 454(V) and 657(VII) authorize the issuance of postage stamps by UNPA for sale to philatelists—UNPA enjoys privileges and immunities under the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations—Direct tax and customs duties exemptions under article II, section 7 of the General Convention—Characterization of United Nations stamps as publications whose importation and distribution constitutes official use

The Office of Legal Affairs of the United Nations presents its compliments to the Permanent Mission of [State] to the United Nations and has the honour to refer to the [State] [Year] [Continent] International Stamps Exhibition to be held in [City] from [day] to [day] December [Year]. In this regard, the Office of Legal Affairs notes that the United Nations Postal Administration ("UNPA") has been invited and intends to attend the aforementioned exhibition in order to exhibit and sell United Nations stamps.

The Office of Legal Affairs has been informed that the organizers of the exhibition are requesting the UNPA to prove that it is exempt from the payment of customs duties for the import of stamps into [State].

The Office of Legal Affairs would be grateful for the Permanent Mission's assistance in confirming the applicable legal framework to the organizers of the exhibition so as to enable the UNPA to take part in the [State] [year] [Continent] International Stamps Exhibition without being required to pay customs duties on the import of United Nations stamps or taxes on the sale of these stamps at the exhibition. In this regard, the Office of Legal Affairs wishes to reiterate the applicable legal framework as follows.

The UNPA was established in 1951. Pursuant to General Assembly resolutions 454(V) and 657(VII), dated 16 November 1950 and 6 November 1952 respectively, the UNPA was authorised *inter alia* to issue postage stamps for sale to philatelists.

As an integral part of the United Nations, the UNPA is governed by the Charter of the United Nations (the "UN Charter") and enjoys the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations (the "General Convention") adopted by the General Assembly of the United Nations, to which [State] acceded on [Date].

In accordance with section 7 of the General Convention the United Nations, its assets, income and other property shall be (*a*) exempt from all direct taxes, (*b*) exempt from customs duties on imports in respect of articles imported by the United Nations for its official use, and (*c*), exempt from customs duties for all United Nations publications.

The Office of Legal Affairs wishes to note that the sale of United Nations stamps by the UNPA constitutes a direct sale by the Organisation and that the income from sales is managed by the Organisation in accordance with its budgetary rules.

The Office of Legal Affairs further wishes to recall that the sale of stamps for philatelic purposes is one of the main functions of the UNPA. Furthermore, the United Nations stamps cannot be used for mailing purposes from and within [State] and should be considered as a publication, a term which has consistently been interpreted by the United Nations

to include not only books or booklets but also any other printed matter prepared by or at the request of the United Nations.

It follows from the above that United Nations stamps should be considered as publications and that their importation and distribution should constitute official use within the meaning of article II, section 7 of the General Convention.

As a result, the import of United Nations stamps in [State] for the purpose of their sale at the [State] [Year] [Continent] International Stamps Exhibition should be exempt from customs duties and the income from these sales should be exempt from taxation. In this regard, the Office of Legal Affairs would be grateful if the Permanent Mission would advise the relevant authorities of the status of the UNPA as set out in this Note.

29 November 2016

2. Procedural and institutional issues

(*a*) Inter-office memorandum to the Chief Executive Officer of the United Nations Joint Staff Pension Fund concerning comments by the Office of Internal Oversight (OIOS) on the Draft United Nations Joint Staff Pension Fund (UNJSPF) Financial Rules

No formal role for the Secretary-General in approving the Draft UNJSPF Financial Rules—Responsibility and authority of the Secretary-General for the investment of UNJSPF assets exclusively derived from and governed by article 19(*A*) of the UNJSPF Regulations—Changes to the internal audit function for the Fund would require General Assembly consideration—Section F of the Draft Financial Rules provides for the applicability of the United Nations Financial Regulations and Rules if the UNJSPF uses the Secretariat procurement machinery—Need for Draft Financial Rules D.4 and D.5 to designate the master record keeper and custodians for UNJSPF funds—Other applicable instruments cover financial operations not addressed in the Draft Financial Rules

Introduction

1. This responds to an e-mail message of 11 May 2016 from the Chief, Risk Management and Legal Services Section, UNJSPF (the "UNJSPF e-mail message") seeking OLA's views on the comments given by OIOS in its memorandum (the "OIOS Memorandum"), of the same date, to you and the RSG, UNJSPF on the draft United Nations Joint Staff Pension Fund Financial Rules. The UNJSPF e-mail message stated that, at the request of the Audit Committee of the United Nations Joint Staff Pension Board, the UNJSPF had shared a draft of the proposed Financial Rules for the Fund with both the Board of Auditors and with OIOS for their comments and advice. In this regard, I also note that, in accordance with the request of the General Assembly by its resolution 69/113, of 10 December 2014, as well as in accordance with article 4 of the Fund's Regulations, the Pension Board will consider, at its upcoming 63rd session, the adoption of the Draft Financial Rules for the Fund.

2. Although specific views are provided below on the comments made by OIOS to the Draft Financial Rules for the Fund, you will recall as an initial matter that in previous opinions, OLA addressed the following two issues raised by OIOS's comments:

(i) With respect to OIOS's comments in paragraphs 4 and 5 of the OIOS Memorandum on the role of OIOS in providing internal audit services to the UNJSPF, OLA addressed the authority and responsibility of OIOS in providing an internal audit function to the Fund in its opinion of 12 March 2015 (the "Audit Function Opinion"). A copy of the Audit Function Opinion is enclosed for ease of reference. In the Audit Function Opinion, OLA made clear that the Pension Board was in a position to select the internal auditor of its own choosing for the Fund's administrative operations, but that having already selected OIOS for that function and having reported this to the General Assembly, any change by the Pension Board of the internal auditor for the Fund's administrative operations should be presented to the General Assembly for consideration. By contrast, for the investment management activities carried out by the Secretary-General under article 19 of the Fund's Regulations, OLA's Audit Function Opinion made clear that "such activities would remain subject to internal audits by OIOS".

(ii) With respect to OIOS's comment in paragraph 4 of the OIOS Memorandum that the UNJSPF Financial Rules cannot derogate from the UN Financial Regulations and Rules, in particular Financial Regulation 5.15, I made clear in my opinion of 7 July 2015 (the "Non-Applicability Opinion") that the operations of the Fund are "exclusively governed by the Regulations of the Fund that have been adopted by the General Assembly" and that, accordingly, "the Fund is not subject to the United Nations Financial Regulations." A copy of the Non-Applicability Opinion is enclosed for your ease of reference.

3. Accordingly, the specific points set forth below concerning OIOS's comments on the Draft Financial Rules for the Fund should be read in conjunction with and are subject to the views expressed in both the Audit Function Opinion and the Non-Applicability Opinion.

Specific Views on OIOS's Comments on the Draft UNJSPF Financial Rules

A. Applicability and Authority of the Draft Financial Rules

4. In paragraph 2 of the OIOS Memorandum, OIOS states that the "draft Financial Rules require the approval of the Secretary-General before they can be made applicable to [the] investment management" activities of the Fund.

5. Article 19(*a*) of the Fund's Regulations sets forth the role of the Secretary-General with respect to the assets of the United Nations Joint Staff Pension Fund. That is to say, the role of the Secretary-General in deciding on the investment of the assets of the Fund is exclusively governed by the Fund's Regulations and Rules. In this regard, article 4(*b*) of the Fund's Regulations provides that "the administration of the Fund shall be in accordance with these Regulations and with Administrative Rules, *including Financial Rules for the Operation of the Fund*, consistent therewith *which shall be made by the Board* and reported to the General Assembly and the member organizations" (emphasis added).

6. In accordance with the foregoing, it is for the Pension Board to approve the Fund's Financial Rules, and the Secretary-General would have no formal role in approving the Pension Fund's Financial Rules. In any case, the Financial Rules must be consistent with the Fund's Regulations, which delineate the role and responsibility of the Secretary-General for the investment of the Fund's assets. Moreover, as a practical matter, we note from your e-mail message that the Representative of the Secretary-General (RSG) for the investment of the assets of the Fund has been in consultations with the CEO on the preparation of the draft Financial Rules. Thus, it would appear that, through the RSG, the Secretary-General has been consulted on the content of the Draft Financial Rules for the Fund.

7. In paragraph 3 of the OIOS Memorandum, OIOS states that the "draft rules A.2, A.3 and A.4 need to be revised to more clearly indicate that the Chief Executive Officer (CEO) does not have authority over UNJSPF investment management, which is directly overseen by the Secretary-General through the RSG."

8. The responsibility and authority of the Secretary-General for the investment of the assets of the Fund is exclusively derived from and governed by article 19(*a*) of the Fund's Regulations. In this regard, Draft Financial Rule A.3 makes clear that in applying and administering the Draft Financial Rules, anything that touches upon the responsibility of the Secretary-General for the investment of the assets of the Fund under article 19 of the Fund's regulations requires prior consultation by the CEO with the RSG and further requires the concurrence of the RSG before any action can be taken. Thus, OIOS's concerns, as raised in paragraph 3 of its memorandum, are allayed in this regard.

B. The Internal Audit Function for the Fund

9. In paragraphs 4 and 5 of the OIOS Memorandum, OIOS states that, "the draft Financial Rules concerning internal audit are unacceptable to OIOS because they violate the authority and independence provided by the General Assembly in its resolutions pertaining to [OIOS]." In this regard, in paragraph 4 of the OIOS Memorandum, OIOS cites United Nations Financial Regulation 5.15 as the basis for its authority to provide the internal audit function for the Fund.

10. As discussed above, I made clear in the Non-Applicability Opinion that the United Nations Financial Regulations and Rules do not apply to the Fund. Thus, United Nations Financial Regulation 5.15 does not create any authority whatsoever for the internal audit function of the Fund to be performed by OIOS. As was further made clear in OLA's Audit Function Opinion, the Board selects the internal auditor for the Fund's administrative operations, and OIOS provides the internal audit function for the Secretary-General's investment activities under article 19 of the Fund's Regulations.

11. Notably, as elaborated in OLA's Internal Audit Opinion, since 1993, the Pension Board has relied upon the UN Secretariat's internal audit machinery (provided by OIOS from 1994 onward) to conduct all internal audit functions for the Fund. The Pension Board has regularly proposed and the General Assembly has approved resources in the Fund's administrative budget to support the performance of such internal audit functions for the Fund by OIOS. Thus, as a practical matter and as was made clear in OLA's Internal Audit Opinion, any decision by the Board to change from the current situation whereby OIOS provides the internal audit function for the Fund's administrative processes would require consideration by the General Assembly (see paragraphs 2 and 14 of OLA's Audit Function Opinion).

C. Rules for matters other than Fund administration and investment management

12. In paragraph 7 of the OIOS Memorandum, OIOS states that the general principles of procurement of the United Nations have been disregarded in the Draft Financial Rules for the Fund. In paragraph 8 of the OIOS Memorandum, OIOS raises concerns that the Draft Financial Rules for the Fund specify that certain banking functions be designated by the CEO or the RSG without elaborating on the competitive procurement processes to be followed in the selection of the relevant banking institutions.

13. In paragraph 111 of its report to the General Assembly in 1996, A/51/9, the Pension Board recommended to the General Assembly that it request the Secretary-General to "continue to make available to the Fund the UN machinery for contracting and procurement" provided that final decisions on procurement exercises would be made either by the CEO or by the RSG acting within their respective operations. In its resolution 51/217, dated 18 December 1996, the General Assembly in fact requested the Secretary-General to continue to make available to the Fund the procurement machinery of the UN in relation to the Fund's procurement activities, subject to the final decision-making being undertaken by the CEO or the RSG within their respective operations. It has long been understood and is reflected in section F of the Draft Financial Rules for the Fund that when the Secretariat of the United Nations invokes such procurement machinery, it does so utilizing the United Nations Financial Regulations and Rules. Moreover, section A.1 of the Draft Financial Rules makes clear that for matters not specifically covered by the Fund's Financial Rules, the UN Financial Regulations and Rules would apply, mutatis mutandis. Accordingly, the concerns of OIOS about the application of the UN's procurement policies, as reflected in the UN Financial Regulations and Rules, to the operations of the Fund would seem to be fully addressed by the Draft Financial Rules for the Fund.

14. In paragraph 8 of the OIOS Memorandum, OIOS states, in relevant part, that "the draft rules D.4 and D.5 state that the RSG shall designate the master record keeper and custodians" and suggests that "the draft Financial Rules be revised accordingly to mention the need to conduct a procurement exercise before designating the master record keeper and custodians." As OLA has previously opined (see, copy of OLA's memorandum of 20 December 2013, enclosed), the Controller's obligation under the United Nations Financial Regulations and Rules to designate the bank accounts in which the monies of the Organization are to be kept is not a procurement function subject to the procurement regulations and rules set out in the United Nations Financial Regulations and Rules. By analogy, the designation of banks to hold and account for the funds of the Pension Fund, whether commercial banks designated by the CEO for payment of benefits or custodian banks and master record keepers designated by the RSG for purposes of depositing and tracking the assets of the Fund under investment, would not be subject to procurement regulations or rules.[1] The provisions of D.4 and D.5 of the Draft Financial Rules, accordingly,

[1] As stated in paragraph 6 of OLA's opinion of 20 December 2013, in designating banks, the Controller should give due consideration to the procurement principles set out in the UN Financial Regulations and Rules. Further applying that analogy, OLA understands that, as a matter of practice, the selection of the Fund's commercial banks, custodians and master record keepers is done through solicitation processes using the UN's procurement machinery, as provided in part F of the Draft Financial Rules for the Fund. Accordingly, OIOS' concern that there is a need to specify in the Draft Financial

are necessary to ensure clarity as to which officials of the Fund have responsibility for the designation of banks for such purposes.

D. Financial Operations of the Fund not Covered by the Financial Rules

15. In paragraph 9 of the OIOS Memorandum, OIOS lists various matters that it considers have not been addressed by the Draft Financial Rules of the Fund. These include, (i) receipt and reconciliation of pension contributions from Member Organizations of the Fund, (ii) recovery of overpayment of pension benefits, (iii) the management and recovery of international income taxes withheld on investment income, (iv) the financial aspects of ASHI, and (v) the financial aspects in income tax matters of retirees.

16. As previously noted, under article 4 of the Fund's Regulations, the Financial Rules are included in and are to be read in conjunction with the Fund's Administrative Rules. Various provisions of the currently existing Financial Regulations and the Administrative Rules of the Fund already deal with the (i) receipt and reconciliation of pension contributions from Member Organizations of the Fund,[2] and (ii) recovery of overpayment of pension benefits.[3] Therefore, there is no need to repeat the provisions of the Administrative Rules of the Fund in the Draft Financial Rules.

17. The other matters raised by OIOS are not issues capable of being addressed by the Financial Rules for the Fund. For example, since the income from the investment of the assets of the Fund is exempt from taxation under article 7 of the Convention on the Privileges and Immunities of the United Nations (General Convention), no provision should be made for the recovery of taxes that a Member State may withhold from the income from investment of the assets of the Fund in contravention of the General Convention. For this same reason, there is no provision in the UN Financial Regulations and Rules for the recovery of taxes withheld on UN income. The financial aspects of ASHI liabilities are addressed in the Fund's accounting policies and need not be addressed in the Fund's Financial Rules. This is the same situation as under the UN Financial Regulations and Rules and the Financial Regulations and Rules of the Funds and Programmes with respect to ASHI liabilities. Finally, the Pension Fund is in no way responsible whatsoever for income tax matters concerning retirees or other beneficiaries of the Fund. This is strictly a matter of their personal legal obligations. Given the status and privileges and immunities to be accorded to the Fund and its assets under the General Convention, the Fund does not engage in income tax withholding or other interactions with the tax authorities of Member

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Rules that a procurement exercise needs to be conducted before designating the master record keeper and custodian(s) is effectively addressed, as set forth in paragraph 13, above.

[2] The Fund's Regulations provide for the definition, amount and receipt of contributions to the Fund in articles 1(*o*) (defining a participant's "own contributions"), article 17 (providing that the assets of the Fund are derived, in part, from contributions to the Fund), and article 25 (providing for the rates of contributions from participants and member organizations). Rules D.1 to D.6 of the Fund's Administrative Rules, of which the Draft Financial Rules are part, provide specific guidance on when and how contributions to the Fund, that are required to be made under the Fund's Regulations, are to be received, maintained and applied.

[3] Article 43 of the Fund's Regulations and Rule J.9(*a*) of the Fund's Administrative Rules, of which the Draft Financial Rules would form a part, already provide for the recovery of overpayments and other indebtedness to the Fund.

States with respect to benefits paid to retirees or other beneficiaries. Thus, the Financial Rules for the Fund should not address such matters.

Conclusion

For the reasons set forth above, the concerns raised by OIOS in paragraphs 4 and 5 of the OIOS Memorandum concerning the basis for the Fund's internal audit function already were addressed in OLA's Audit Function Opinion and OLA's Non-Applicability Opinion. The other concerns raised by OIOS regarding the Draft Financial Rules for the Fund, as discussed above, have been sufficiently addressed in the Draft Financial Rules for the Fund or in the overall legal framework governing the Fund's operations, namely the Regulations of the Fund, the Administrative Rules of the Fund and, for issues concerning the status and privileges and immunities of the Fund, in the General Convention. Given the concerns raised by OIOS, OLA would be available to consult with representatives of the Fund (from both the secretariat and IMD) and with representatives of OIOS in order to ensure that OIOS's concerns are fully addressed so that the Draft Financial Rules for the Fund can be adopted by the Pension Board at its upcoming session.

17 June 2016

ENCLOSURE 1: INTER-OFFICE MEMORANDUM TO THE CHIEF EXECUTIVE OFFICER OF THE UNITED NATIONS JOINT STAFF PENSION FUND

[…]

SUBJECT: OIOS AUTHORITY AND RESPONSIBILITY FOR PROVIDING AN INTERNAL AUDIT FUNCTION TO THE UNITED NATIONS JOINT STAFF PENSION FUND

1. I refer to your memorandum, dated 30 June 2014, seeking advice from the Office of Legal Affairs ("OLA") with respect to the authority and responsibility of the Office of Internal Oversight Services ("OIOS") for providing an internal audit function to the United Nations Joint Staff Pension Fund (the "Pension Fund"), as well as further discussions on this matter, including on the timing of this advice. Thus, you have sought to clarify whether the internal audit mandate of OIOS extends to the Pension Fund. We understand from your memorandum that this question has arisen in the context of discussions within the Pension Fund on the development of financial rules for the Fund. We further understand that this question may be discussed at the 2015 session of the United Nations Joint Staff Pension Board (the "Pension Board").

Executive Summary

2. In responding to your query, the below considers OIOS' mandate and jurisdiction, the status and governance structure of the Pension Fund, and the legal framework under which OIOS was selected to carry out internal audits of Pension Fund operations. For the reasons set forth below, the Pension Fund would appear to be in a position to select the internal auditor of its administrative operations. In light of the obligation of the Pension Board to report to the General Assembly, however, as well as the Assembly's prior consideration of this issue, we would recommend that any proposal that would involve changes

to the present arrangement be presented by the Pension Board to the General Assembly for its consideration.

OIOS' mandate and jurisdiction

3. In accordance with Article 97 of the Charter, the Secretary-General is the Chief Administrative Officer of the United Nations. In this capacity, the Secretary-General is responsible for the administration and oversight of the staff and resources of the Organization.

4. With its resolution 48/218*B* of 29 July 1994 on the establishment of OIOS, the General Assembly provided that "the purpose of [OIOS] is to assist the Secretary-General in fulfilling his internal oversight responsibilities in respect of the resources and staff of the Organization …".[4] The General Assembly mandated OIOS with four specific oversight functions to assist the Secretary-General: (i) monitoring, (ii) internal audit, (iii) inspection and evaluation, and (iv) investigation. While the General Assembly has since adopted a number of additional resolutions regarding OIOS' mandate and jurisdiction, such resolutions are to be read in accordance with the Secretary-General's overall authority over the Organization, including its funds and programmes, as enshrined in the Charter. That is to say, OIOS' mandate to assist the Secretary-General in his oversight responsibilities remains unchanged in this regard.

5. Further, with respect to the internal audit function, the Financial Regulations of the United Nations, as adopted by the General Assembly, provide in Regulation 5.15 that "[OIOS] shall conduct independent internal audits". Accordingly, OIOS' jurisdiction to conduct internal audits extends to all United Nations entities to which the United Nations Financial Regulations are applicable.

The Pension Fund's status and governance structure

6 The Pension Fund was established by the General Assembly in 1949 as an inter-agency entity. Currently, the Pension Fund comprises twenty-three member organizations, including not only the Secretariat and Funds and Programmes, but also a number of Specialized Agencies and other entities which fall outside of the Secretary-General's authority.[5] The administration of the Pension Fund is governed by the Regulations of the United Nations Joint Staff Pension Fund (the "Pension Fund Regulations"), as adopted and amended by the General Assembly.[6] We note in this regard that, while the Pension Fund has on a voluntary basis opted to apply the Financial Regulations of the United Nations to the administration of the Fund, as provided by article 4 of the Pension Fund Regulations, only the Pension Fund Regulations themselves, along with associated Administrative Rules, bind the administration of the Pension Fund.[7]

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[4] General Assembly resolution 48/218*B*, para. 5(*c*).

[5] United Nations Joint Staff Pension Fund, Annual Report, at p. 2, https://www.unjspf.org/wp-content/uploads/2017/01/AnnualReport2014-eng.pdf. See also A/68/7/Add.3, para. 3.

[6] The Pension Fund Regulations were first adopted by the General Assembly in resolution 248 (III) and have since been amended by the Assembly a number of times on the basis of recommendations by and consultation with the Pension Board.

[7] In light of the bifurcated structure of the Pension Fund, as explained below, the activities of the Investment Management Division are subject to the Financial Regulations of the United Nations and fall under the jurisdiction of OIOS See infra para. 14. We note that, as provided by article 4(*b*) of the Pension

7. The Pension Fund Regulations set out the governance structure of the Pension Fund and provide that it is to be administered by the Pension Board, a secretariat to the Pension Board (the "Pension Fund secretariat"), and staff pension committees for each member organization..[8] Separately, the investment of the assets of the Pension Fund is to be managed by the Secretary-General through the Investment Management Division ("IMD").[9] The Pension Fund, thus, has a bifurcated management structure.[10] The Chief Executive Officer of the Pension Fund administers the Pension Fund secretariat under the authority of the Pension Board, which reports directly to the General Assembly, whereas the Secretary-General is responsible for the IMD.[11]

The basis on which OIOS conducts Internal audits for the Pension Fund

8. The issue of who would conduct regular internal audits of the Pension Fund was initially raised by the Board of Auditors (BoA) of the United Nations during the General Assembly's 46th session. In its report on the accounts of the Pension Fund for the year ending 31 December 1993, the Board of Auditors observed that, for several years, there had not been systematic internal audits of the Pension Fund's activities.[12] The BoA noted that "investments could be audited by the United Nations Internal Audit Division (IAD) as these are managed by the Secretary-General of the United Nations", and observed that the internal audits conducted by the IAD had "been limited to the activities of the Pension Fund which relate to the participants who are staff members of the United Nations". In its report, the Board of Auditors recommended that "consideration should be given either to formally designating the Office of Inspections and Investigations[13] as the internal auditors of the [Pension] Fund or alternatively establishing arrangements for a separate internal audit function for the activities of the [Pension] Fund".[14]

9. In its report to the General Assembly on the operation of the Fund in 1993 (the "1993 Report"), the Pension Board also agreed that, "for the time being, the use of the internal audit services of the United Nations should be explored, notwithstanding the inter-agency nature of the [Pension] Fund and its operations".[15]

Fund Regulations, the administration of the Fund shall also be m accordance with "Administrative Rules, including Financial Rules for the operation of the Fund", which are consistent with the Pension Fund Regulations.

[8] Pension Fund Regulations, article 4(*a*).

[9] *Ibid*., article 19(*a*) and Annex II, Appendix 3, V, para. 6.

[10] A/68/7/Add.3, para. 31.

[11] In 2013, a proposal to consolidate the management of the IMD and the secretariat of the Fund was considered by the Advisory Committee on Administrative and Budgetary Questions. A/68/7/Add.3, paras. 33–34. The General Assembly took note of the proposal and decided to maintain the current structure of the Fund General Assembly resolution 68/247, para. 12 ("Takes note of paragraphs 33 and 34 of the report of the Advisory Committee, and in this regard decides to maintain the current structure of the Fund").

[12] See A/49/9 (Suppl), Annex III, para. 61.

[13] The Office of Inspections and Investigations was the predecessor entity to OIOS.

[14] A/49/9 (Suppl), Annex III, para. 64.

[15] *Ibid*., para. 150.

10. During the 49th session of the General Assembly, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) took up the 1993 Report. The ACABQ welcomed the comments of the BoA on the establishment of an internal audit function for the Pension Fund, while noting that the "investment activities carried out by the United Nations Investment Management Service for the Pension Fund may be audited without restrictions by the [IAD], as these are managed by the Secretary-General".[16] The ACABQ further requested that the Pension Board present it with the budgetary implications of the two approaches to internal auditing, *i.e.* the resort to OIOS or the establishment of an internal auditing function within the Pension Fund Secretariat.

10. In its resolution 49/224, the General Assembly noted the action taken by the Pension Board regarding the BoA recommendation, as well as the comments of the ACABQ thereon, and called upon the Pension Board to report on the budgetary implications of any arrangements made for internal audits of the Pension Fund.

11. Thereafter, in its report to the General Assembly on the operation of the Fund in 1995, the Pension Board indicated that it had established an internal audit function by providing a budgetary allocation to "enable [OIOS] to carry out that function"[17], and that OIOS audits would commence in September 1996. Finally, on the basis of consideration by the ACABQ and a recommendation of the Fifth Committee, the General Assembly, in its resolution 51/217, took note "of the arrangements made for internal audits of the [Pension] Fund, to be carried out by OIOS".[18]

12. In view of the foregoing, it appears that OIOS was selected to carry out internal audits for the Pension Fund as a result of the approval by the Pension Board of a BoA recommendation, which was also presented to the ACABQ and the General Assembly.

Proposal to adopt Pension Fund-specific financial regulations and the authority of the Pension Fund to select its internal auditor

13. We would also note that the General Assembly, by resolution 69/113, recently approved an amendment to article 4 of the Pension Fund Regulations in order to establish clear authority for the development of financial rules specific to the operation of the Fund.[19] The General Assembly "[e]mphasize[d] the importance of the [Pension] Board promulgating financial rules that will govern the financial management of the Fund, and in this regard looks forward to receiving further information in, the next report of the Board".[20]

14. Accordingly, the Pension Fund would appear to be in a position to adopt financial rules that govern its internal audits, as long as such rules remain consistent with

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[16] A/49/576, para. 25.

[17] A/51/9 (Suppl), para. 113.

[18] General Assembly resolution 51/217, V, para. 3.

[19] General Assembly resolution 69/113, para. 9, *"[a]pproves* the amendment to article 4 of the [Pension Fund Regulations], as set out in annex XI to the report of the Pension Board, in order to establish clear authority and reference to the financial rules of the Fund". Accordingly, article 4(*b*) of the Regulations of the Fund now provides "The administration of the Fund shall be in accordance with these Regulations and with Administrative Rules, *including Financial Rules for the operation of the Fund,* consistent therewith which shall be made by the Board and reported to the General Assembly und member organizations" (emphasis added). For more information on the amendment, see A/69/9, Annex XI.

[20] General Assembly resolution 69/113, para. 10 (emphasis omitted).

the Pension Fund Regulations. In this regard, we would note that the Pension Fund Regulations do not provide any limitations on who should conduct internal audits of the Pension Fund. Nevertheless, in light of the obligation of the Pension Board to report to the General Assembly, as well as the Assembly's prior involvement as described above, we would recommend that any proposal that would involve changes to the present arrangement be presented by the Pension Board to the General Assembly for its consideration. We would also note in this regard that the recent amendments to the Pension Fund Regulations appear to apply only to the administrative operations of the Fund.[21] Accordingly, to the extent that the investment activities of the Pension Fund remain subject to the direct authority of the Secretary-General, such activities would remain subject to internal audits by OIOS.

12 March 2015

Enclosure 2: Inter-office memorandum to the Chief Executive Officer of the United Nations Joint Staff Pension Fund

[…]

Subject: Applicability of the UN Financial Regulations and Rules to the UN Joint Staff Pension Fund

Background

1. I refer to your memorandum of 5 May 2015, by which you requested an opinion from OLA on a fundamental issue arising from the proposal by the Board of the UN Joint Staff Pension Fund to establish financial rules specific to the administration of the Fund. As your memorandum indicated, the issue arose from comments made by OIOS, in a memorandum dated 1 May 2015 from the Chief, New York Audit Service, Internal Audit Division, OIOS, concerning proposed financial rules for the Fund that the Fund's secretariat has drafted for consideration by the Pension Board (the "OIOS memorandum"). You had asked to receive OLA' s opinion before the June meeting of the Pension Board's Audit Committee. However, it was agreed at the working level that it would be important to further gauge OIOS's views on the matter, as well as to seek views of the Board of Auditors on the issue during that meeting of the Audit Committee. Thus, it was agreed that OLA's opinion would be given before the Pension Board's 62nd session to be held later this month at UNOG.

2. The issue raised by OIOS arises from the fact that the Fund is seeking to establish financial rules for the Operation of the Fund. In its report to the General Assembly regarding its 61st session in July 2014, the Pension Board "supported the Fund's efforts to finalize its consultative process with all stakeholders in respect of drafting Fund-specific Financial Rules, which take into account the governance structure, mandate and funding source of the Fund."[22] In order to provide a regulatory basis for the Board's establishing such Fund-specific financial rules, the Pension Board proposed to the General Assembly

[21] Article 4 of the Fund Regulations, as recently amended, provides for the development of "Financial Rules for the *operation* of the Fund", and article 14 of the Fund Regulations provides for "annual audits of the *operations* of the Fund", A/69/9, Annex XI (emphasis added).

[22] Report of the United Nations Joint Staff Pension Board on its Sixty-First Session, A/69/9, para. 175.

an amendment to article 4 of the Fund's Regulations, authorizing the Pension Board to make Financial Rules as part of the Fund's Administrative Rules for the administration of the Fund.[23] By its resolution 69/113, the General Assembly "approve[d] the amendment to Article 4" of the Fund's Regulations "in order to establish clear authority [for] and reference to the financial rules of the Fund."[24]

The Legal Issue

3 In the OIOS memorandum, OIOS takes the position that any Fund-specific financial rules are subject to and must be consistent with the United Nations Financial Regulations.[25] Moreover, OIOS concludes that, "in areas where there are no suitable financial regulations, the Fund secretariat should develop and propose appropriate additional financial regulations for approval by the General Assembly." The idea that the financial operations of the Fund are subject to the United Nations Financial Regulations appears also to be shared by the Board of Auditors. In this regard, OLA understands that during the recent meeting of the Audit Committee of the Pension Board and on various other occasions, representatives of the UN Board of Auditors have maintained that the mandate for the Board of Auditors to audit the operations of the Fund derives from article VII of the United Nations Financial Regulations and Rules.

Legal Analysis

4 As an initial matter, the question of the applicable regulatory framework governing the operations of the Pension Fund presents a legal question. As OIOS has itself recognized, the Office of Legal Affairs is the central legal service of the United Nations, including its peacekeeping and other offices and operations away from Headquarters, as well as the principal and subsidiary organs of the UN.[26] Thus, OIOS has recommended, in particular, that OLA should be consulted on the legal implications of new developments or approaches for programme delivery.[27] The Pension Board's proposed adoption of new

[23] *Id,* para. 176.

[24] General Assembly resolution 69/113 of 10 December 2014, para. 9.

[25] The OIOS memorandum states that "the Pension Board has informed the General Assembly that the UNJSPF follows the Financial Regulations of the United Nations, and this has been acknowledged by the General Assembly". The Pension Board has not sought approval from the General Assembly to modify any United Nations Financial Regulations *and should therefore continue to comply with the [UN] Financial Regulations that apply to the Fund secretariat"* (emphasis added). In fact, on the recommendation of the Pension Board, the General Assembly has only authorized the Fund "to apply *mutatis mutandis* the Financial Regulations and Rules of the United Nations to its accounting processes and financial reporting in a manner that allows the Fund to be compliant with the International Public Sector Accounting Standards by 1 January 2012" (General Assembly resolution 66/247, Part V, para. 8). This is hardly an acknowledgement by the General Assembly that the Fund must comply with the UN Financial Regulations in carrying out its operations. Moreover, by issuing Fund-specific financial rules, the Pension Board can now directly address the question of accounting standards for the Fund.

[26] OIOS Report on the In-Depth Evaluation of Legal Affairs, E/AC 51/2002/5, para. 78 ("In well-defined areas of the United Nations legal framework, such as constitutional or procedural matters, the advice provided by OLA was authoritative and solution-oriented").

[27] *See id,* para. 82 ("OLA should systematically be involved in the development and review of new programmes … and of new approaches being considered or used in programme delivery, in order to clarify the legal implications of these new developments or approaches").

financial rules is certainly an example of such a new approach to the administration of the Pension Fund. Accordingly, it is unclear why OIOS would have issued comments concerning the regulatory framework of the Pension Fund without first having consulting with OLA. In this connection, in a memorandum of 12 March 2015, which was issued less than two months before the OIOS memorandum and on which the leadership of OIOS was copied, OLA had opined that "while the Pension Fund has on a voluntary basis opted to apply the Financial Regulations of the United Nations to the administration of the Fund, *only the Pension Fund Regulations themselves, along with the associated Administrative Rules, bind the administration of the Fund*" (emphasis added).

Applicability of the UN Financial Regulations and Rules to the Pension Fund

5. The contention by OIOS and the apparent understanding by the Board of Auditors that the Fund is subject to the United Nations Financial Regulations is not consistent with the regulatory framework for the administration of the Fund established by the General Assembly. By its resolution 248 (III), of 7 December 1947, the General Assembly adopted regulations for the establishment and operation of the United Nations Joint Staff Pension Fund in order to provide a UN System-wide retirement and disability benefit scheme. Article 14 of those regulations adopted by the General Assembly in 1947 established the Fund as follows:

> *"Article 14*
> *"Establishment of a Pension Fund*
>
> "A Fund shall be established to meet the liabilities resulting from these regulations. All moneys deposited with bankers, all securities and investments and other assets which are the property of the Fund shall be deposited, acquired and held in the name of the United Nations. The Fund shall be administered *separately from the assets of the United Nations* by the Joint Staff Pension Board *in accordance with these regulations, and shall be used solely for the purposes provided for in these regulations.*"[28]

Thus, at the time it was established, the General Assembly made clear that the Pension Fund was to be administered exclusively in accordance with regulations promulgated by the General Assembly for the operation of the Pension Fund. Moreover, the Pension Fund was to be administered separately from the financial assets of the United Nations that are subject to the UN Financial Regulations.

6. Over the years the Pension Fund Regulations have been amended on numerous occasions by the General Assembly, such that the Pension Fund Regulations have evolved and have been reorganized.[29] But the salient feature that the administration of the Pension Fund is to be governed exclusively in accordance with the Regulations established therefor by the General Assembly has remained unchanged. Thus, article 4 of the Regulations of the UN Joint Staff Pension Fund currently provides as follows:

[28] General Assembly resolution 248 (III), annex, emphasis added.

[29] Article 49 of the Pension Regulations, JSPB/G.4/Rev.20, provides that only the General Assembly may amend the Fund's Regulations.

"Article 4
"Administration of the Fund

"(*a*) The Fund shall be administered by the United Nations Joint Staff Pension Board, as staff pension committee for each member organization, and a secretariat to the Board and to each such committee

"(*b*) The administration of the Fund *shall be in accordance with these Regulations and with Administrative Rules, including Financial Rules for the operation of the Fund, consistent therewith* which shall be made by the Board and reported to the General Assembly and the member organizations

"…

"(*d*) *The assets of the Fund shall be used solely for the purposes of, and in accordance with, these Regulations.*"[30]

7. Given article 4 of the Fund's Regulations, the operations of the Fund cannot be subject to the UN Financial Regulations. The Fund's Regulations and the corresponding Administrative Rules of the Fund, including Fund-specific Financial Rules, exclusively govern the operation of the Fund. Considering the nature of the Pension Fund, such exclusivity is appropriate.

8. The nature of the Pension Fund is just that: it is a pooled fund of financial resources made available to pay benefits.[31] Consequently, the Regulations adopted by the General Assembly for the Operation of the Fund are *ipso facto* "financial regulations." In this regard, the Fund's Regulations provide for the sources of income to the Fund as well as for the administration of the assets and liabilities of the Fund.[32] The Fund's regulations further provide for the actuarial methodologies for determining the long-term value of the Fund's income, assets and liabilities,[33] as well as for the accounting, auditing and currency of the Fund.[34]

9. By contrast, the United Nations Financial Regulations provide for the financial administration of activities that are periodically programmed and financed by the Member States. As such, the UN Financial Regulations are ill-suited to the Operation of a pension fund that the General Assembly had specifically designed in order to accrue and maintain assets and to pay benefits over the lifetime of its beneficiaries. In this regard, the UN Financial Regulations provide for sources of income to the United Nations through assessments from Member States and from voluntary contributions and other miscellaneous sources.[35] The UN Financial Regulations and Rules also provide for the authority to

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[30] JSPB/G.4/Rev.20, as amended by General Assembly resolution 69/113, of 10 December 2014, emphasis added.

[31] The "Scope and Purpose" provision of the Fund's Regulations states that "the United Nations Joint Staff Pension Fund is a fund established by the General Assembly of the United Nations to provide retirement, death, disability and related benefits for the staff of the United Nations and the other organizations admitted to membership in the Fund". *See id* page 1.

[32] *Id. See* article 17 (derivation of the assets of the Fund), articles 21–26 (contributions and other payments into the Fund), and articles 27–40 (benefit payments and other liabilities of the Fund).

[33] *Id. See* articles 9–13 (Fund's actuaries, actuarial bases and valuations, and pension transfers).

[34] *Id. See* article 14 (annual reporting and auditing of the Fund), article 19(*b*) (accounting for the Fund's assets), and article 47 (currency).

[35] Secretary-General's Bulletin, ST/SGB/2013/4, of 1 July 2013, entitled, "Financial Regulations and Rules of the United Nations", article III, Financial Regulations 3.1 to 3.14.

commit and utilize funds in order to implement programmes based on programme budgets and appropriations therefor voted on by the General Assembly.[36]

10. Thus, the UN Financial Regulations provide for the financial administration of the Organization's periodic operations based on activities programmed, budgeted and ultimately financed mainly through assessments on the Member States, whereas the Pension Fund Regulations provide for the ongoing accrual of assets and payment of long-terms liabilities from the Fund. Given the fundamental differences in approach of the two operations and their respective regulatory schemes, it is inconceivable that the Pension Fund's operations could be subject to the application of the UN Financial Regulations. And, indeed, given the clear provisions of article 4 of the Fund's Regulations, the operations of the Fund are not.

Authority of the Pension Board to Make Financial Rules for the Fund

11. As previously noted, the General Assembly recently amended article 4(*b*) of the Fund's Regulations to expressly authorize the Pension Board to make Fund-specific financial rules. As is stated in article 4(*b*), such Fund-specific financial rules must be consistent with, and thus are subject to, the Fund's Regulations as adopted by the General Assembly Additionally, as is the required practice under article 4(*b*) of the Fund's Regulations, once made by the Board, such Fund-specific financial rules would have to be reported to the General Assembly. This allows the Assembly an opportunity to consider and comment on them. Accordingly, the Pension Board has the authority under the Fund's Regulations to promulgate financial rules for the proper administration of the Fund, and it need not seek further authority from the General Assembly to do so.

12. OLA understands that the proposed Fund-specific financial rules are still being prepared, and that OLA is being separately consulted on their contents. It is further understood that the Fund secretariat will take time to ensure that OIOS, the Board of Auditors and others concerned with the contents of the proposed financial rules are appropriately consulted before the draft financial rules are finalized and submitted to the Pension Board for its consideration. Finally, OLA understands that the proposed Fund-specific financial rules will fill in gaps not otherwise covered by the Fund's Regulations, such as specifying accounting standards, procedures for the certification and payment of benefits authorized under the Fund's Regulations, and the manner in which the Fund's administrative expenses are proposed and allocated from the assets of the Fund. To the extent that such gap-filler financial rules can be drafted in a manner consistent with the wording of UN Financial Regulations and Rules, particularly when common administrative practices, such as in budgeting, are involved, this would be advisable. However, the only requirement for the Fund-specific financial rules is that they be consistent with, and thus subject to, the Fund's Regulations.

Mandate of the Board of Auditors to Audit the Fund's Operations

13. Lastly, as previously noted, OLA understands that representatives of the Board of Auditors have taken the position that the BOA's mandate to audit the operations of the Fund derives from article VII of the United Nations Financial Regulations and Rules.

[36] *Id*. *See* article II, Financial Regulations 2.1 to 2.14 (budgets), and article V, Financial Regulations 5.1 to 5.14 (utilization of appropriated funds).

Given that the Fund's Regulations exclusively govern the operations of the Fund, this cannot be the case. Moreover, OLA understands that there is some uncertainty in the Board of Auditors about how its audit reports on the operations of the Fund should be transmitted to the General Assembly. Article 14 of the Regulations of the Fund provides the mandate for the Board of Auditors to audit the operations of the Fund and specifies how the audit reports of the Board of Auditors concerning the operations of the Fund should be transmitted to the Assembly:

"Article 14
"Annual Report and Audit

"(*a*) The [Pension] Board shall present to the General Assembly and to member organizations [of the Fund], at least once every year, a report, including financial statements, on the operation of the Fund and shall inform each member organization of any action taken by the General Assembly upon the report.

"(*b*) There shall be annual audits of the operations of the Fund, in a manner agreed upon between the United Nations Board of Auditors and the [Pension] Board. An audit report on the accounts of the Fund shall be made every year by the United Nations Board of Auditors; a copy of the audit report shall be including in the report under [Article 141] (*a*) above."[37]

14. Based on the foregoing, the mandate of the Board of Auditors to audit the operations of the Fund is exclusively derived from article 14 of the Fund's Regulations. Article VII of the United Nations Financial Regulations and Rules has no bearing *per se* on the manner in which the Board of Auditors audits the operations of the Fund. In particular, article 14(*b*) of the Fund's Regulations requires the Board of Auditors to agree with the Pension Board on the manner in which the Fund's operations are audited. It would be enormously helpful for both the Board of Auditors and the Pension Board to reduce such an agreement to writing.[38] Finally, article 14(*b*) makes clear that the Board of Auditors should transmit its audit reports on the operations of the Fund to the General Assembly by including copies of those audit reports in the Pension Board's annual report to the General Assembly.

Conclusion

15. The operations of the United Nations Joint Staff Pension Fund are exclusively governed by the Regulations of the Fund that have been adopted by the General Assembly. The Fund is not subject to the United Nations Financial Regulations. The General Assembly has authorized the Pension Board to promulgate Fund-specific financial rules to the extent that such financial rules are consistent with the Regulations of the Fund. In matters of common application, such as administrative matters of budgeting, accounting standards,

[37] JSPB/G.4/Rev.20.

[38] In Annex XI to its report to the Assembly, A/69/9, the Pension Board proposed to amend article 14(*b*) to require that an "agreement with the Board of Auditors on the terms of reference for the annual audits of the operations of the Fund shall be set out in an annex to the Fund's Administrative Rules". However, the Assembly did not approve amending article 14(*b*) to require that such an agreement be reduced to writing and added to the Fund's Administrative Rules. See General Assembly resolution 69/113, para. 13.

etc., such Fund-specific financial rules could be drafted to be consistent with the UN Financial Regulations and Rules, provided that this is to be regarded only as a matter of convenience and to avoid duplication where possible. Finally, the mandate for the Board of Auditors to audit and report on the operations of the Fund is exclusively governed by article 14(*b*) of the Fund's Regulations. It would be helpful for the Board of Auditors and the Pension Board to agree on the manner in which such audits are to be carried out.

16. You may wish to bring the foregoing views of OLA to the attention of the Pension Board and any other relevant parties interested in this matter.

7 July 2015

Enclosure 3: Inter-office memorandum to the Under-Secretary-General for Management

[…]

Subject: Authority of the Controller to Designate Banking Institutions in which the Funds of the United Nations Shall be Kept

1. I refer to your memorandum of 16 December 2013 (copy enclosed), addressed to both the Under-Secretary-General for Internal Oversight Services and the United Nations Legal Counsel. By your memorandum, you seek OLA and OIOS's views and recommendations in connection with the memorandum, dated 22 November 2013, from the Controller regarding the authority of the Controller to designate banking institutions in which the funds of the United Nations shall be kept. The particular issue raised by the Controller's memorandum is whether the Controller's authority under the Financial Regulations and Rules to designate banking institutions can be exercised outside of any requirements to acquire services for the Organization through procurement exercises conducted in accordance with the UN Financial Regulations and Rules.

2. Financial Regulation 4.15 provides that "the Secretary-General shall designate the bank or banks in which the funds of the Organization shall be kept." Financial Rule 104.4 further specifies that "the Under-Secretary-General for Management shall designate the banks in which the funds of the United Nations shall be kept, shall establish all official bank accounts required for the transaction of United Nations business and shall designate those officials to whom signatory authority is delegated for the operation of those accounts." In accordance with Financial Rule 101.1 and Administrative Instruction, ST/AI/2004/1, of 8 March 2004, entitled, "Delegation of Authority under the Financial Regulations and Rules of the United Nations" (the "Delegation of Authority AI"), the authority of the Under-Secretary-General under Financial Rule 104.4 has been delegated to the Controller.

3. In other words, by Financial Regulation 4.15, the General Assembly has given the Secretary-General the authority to designate the bank or banks in which the funds of the Organization shall be kept. That authority has been delegated to the Under Secretary-General for Management by Financial Rule 104.4, who has delegated that authority to the Controller by Financial Rule 101.1 and the Delegation of Authority AI.

4. However, Financial Regulation 5.12 provides that "procurement functions include all actions necessary for the acquisition by purchase or lease, of property, including products and real property, and of services, including works." The designation of banks

to hold the funds of the Organization necessarily involves the acquisition of commercial banking services by the Organization. Thus, the designation of banks falls within such a definition of procurement functions. Financial Regulation 5.12 also states that "the following principles shall be given due consideration when exercising the procurement functions of the UN: (*a*) best value for money; (*b*) fairness, integrity and transparency; (*c*) effective international competition; [and] (*d*) the interests of the United Nations." Consequently, in exercising the authority given under the Financial Regulations and Rules to designate banks to hold the UN's funds, the Controller would be exercising the procurement functions of the UN. Thus, the Controller should give due consideration whenever doing so to the principles set forth in Financial Regulation 5.12.

5. Financial Rule 105.13(*a*) provides that "the Under-Secretary-General for Management is responsible for the procurement functions of the United Nations, shall establish all United Nations procurement systems, and shall designate the officials responsible for performing procurement functions." In the Delegation of Authority AI, the Under-Secretary-General for Management further delegated such responsibility to the Assistant Secretary-General for Central Support Services. That Financial Rule and the delegations of authority thereunder cannot override the separate authorization given to the Secretary-General under Financial Regulation 4.15 and the delegations made under Financial Regulation 104.4 and the Delegation of Authority AI to the Controller regarding the designation of banks.

6. Accordingly, under the Financial Regulations and Rules and relevant administrative issuances thereunder, the Controller has been given specific authority to designate the banks in which the Organization's funds shall be kept.[39] In designating banks to hold the UN's funds, however, the Controller must be guided by and give due consideration to the principles for procurement set forth in Regulation 5.12. In certain circumstances, the Controller may wish to make use of the procurement machinery of the Organization, as elaborated in Financial Rules 105.13 to 105.19.

7. Based on the foregoing, you may wish to work with the Controller and the Assistant Secretary-General for Central Support Services to develop criteria as to when and how the Controller could make use of the procurement machinery of the Organization, as elaborated in Financial Rules 105.13 to 105.19, when designating banks in which the funds of the Organization shall be kept.

20 December 2013

[39] Pursuant to Financial Rule 101.1 and under section 1 of Administrative Instruction, ST/AI/2004/1, on the delegation of authority under the Financial Regulations and Rules of the United Nations, the Controller and the Assistant Secretary-General for Central Support Services "may, in turn, delegate authority and responsibility to other officials, as appropriate." Thus, for example, the Controller could delegate authority to designate banks to the United Nations Treasurer.

(*b*) Inter-office memorandum to the Director of a unit in the Department of Peacekeeping Operations concerning an arrangement between a Member State and the participating United Nations organizations for the establishment of a trust fund for that Member State

Terms of Reference of a United Nations Trust Fund—Independence of the Secretary-General pursuant Article 100 of the Charter of the United Nations and United Nations Staff Regulation 1.2 (d)—The United Nations has the sole authority to make the final decisions on the allocation of United Nations funds

1. I refer to your memorandum of 1 June 2016, requesting OLA's review of an umbrella "Arrangement between the Government of [State], through the Administrative Department for the Presidency of [State] and the [State] Presidential Agency of International Cooperation, […], and the Participating United Nations Organizations in [State] signing this Arrangement, for the establishment of the [Trust Fund]" (hereinafter the "Agreement"). We note that the Agreement has already been signed by the Government of [State], and you have indicated that it has been signed by UNDP, UN Women, FAO, the Office of the UN Resident Coordinator in [State], OCHA, UNICEF, UNESCO, UNODC, UNFPA and WFP. The [Trust Fund] is managed by United Nations Development Programme (UNDP) as the Administrative Agent, under UNDP's Financial Regulations and Rules according to your memorandum. UNMAS [United Nations Mine Action Service]'s participation in the Fund "will provide an opportunity to receive funding through the United Nations Voluntary Trust Fund for Assistance in Mine Action to support mine action projects in [State]."

2. I further refer to the meeting of 17 June 2016 between members of our respective offices, as well as to subsequent communications between our offices regarding the Terms of Reference (ToR) for the [Trust Fund], including an exchange of emails on 22 and 29 June. Although the ToR were not attached to your memorandum of 1 June, we were subsequently provided with the English translation of the ToR, dated 17 February 2015, and understand that, pursuant to such terms, the Steering Committee governing the [Trust Fund] will be responsible for, inter alia, the "supervision" of the Fund, "[a]pprov[ing] projects to be financed by the Fund, [a]pprov[ing] Funds' direct costs, especially those related to the Secretariat support operations, evaluations and audits", making fund allocation decisions and overseeing the effective monitoring and evaluation of the activities financed by the Fund (see, *e.g.*, section 5.1.1 of the ToR). The Steering Committee may also "[a]pprove and update the Fund's Terms of Reference, as required" (see sections 5.1.1 and 13 of the ToR). We further understand that the Steering Committee will include non-UN entities, such as the Government of [State] (*i.e.*, "the Minister Counsel[l]or for the Post-Conflict, the Director of […] (International Cooperation Presidential Agency), [State], and the Ministry of Foreign Affairs or the Director of the National Planning Department; the latter in a rotational basis", two representatives of the "contributors" (donors), in rotation, and "[t]wo [State] civil society/private sector representatives designated by the President of [State]" *(see* section 5.1.1).

3. The funds in the [Trust Fund] may be disbursed to UN System organizations, Governmental entities and non-Governmental entities (see section 5.3 of the ToR). In order to receive the funds, the UN System organizations as well as the Governmental and non-Governmental entities must sign a Memorandum of Understanding with UNDP as the Administrative Agent of the [Trust Fund] (see *Ibid.*).

4. While the Agreement itself does not raise concerns from a legal point of view, the ToR for the [Trust Fund] are legally problematic. As explained by my colleagues in the aforementioned meeting and communications with UNMAS, the inclusion of non-UN entities in the Steering Committee that makes fund allocation decisions in the [Trust Fund] is not consistent with Article 100 of the Charter of the United Nations and with Staff Regulation 1.2, which governs the United Nations. While it would not be objectionable for external entities to provide advice and suggestions on the use of UN [Trust Fund] funds, the authority to make decisions on which projects to approve for funding needs to remain solely with the Organization.

5. Pursuant to Article 100 of the Charter of the United Nations, "[i]n the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization." This principle is elaborated in the Staff Regulations of the United Nations, which embody the fundamental conditions of service and the basic rights, duties and obligations of the United Nations staff members. Pursuant to UN Staff Regulation 1.2 (*d*), "[i]n the performance of their duties staff members shall neither seek nor accept instructions from any Government or from any other source external to the Organization." Indeed, upon becoming UN international civil servants, staff members must take a written oath that they will not "seek or accept instructions in regard to the performance of [their] duties from any Government or other source external to the Organization." (Staff Regulation 1.1 (*b*)).

6. Last, but not least, once donors' contributions are received by the UN, including UNDP, they become UN funds, and pursuant to the UN and UNDP Financial Regulations and Rules, only the Organization and its officials are authorized to make decisions with respect to the use of such UN funds. In making such decisions, UN staff members may not accept instructions from external sources, for the reasons mentioned above.

7. In view of the foregoing, we recommend that, before UNMAS signs the Agreement, the UNDP [Trust Fund] Office be requested to revise the ToR of the [Trust Fund] and the Agreement in order to clarify that, while the Government of [State] and its representatives may provide advice and recommendations with respect to which projects to fund from the [Trust Fund], the authority to make the final decisions on the allocation of funds needs to rest with the United Nations.

9 August 2016

(*c*) Internal email message concerning the administrative format for issuance of standing administrative measures ("SAMs")

Recommendation to set out SAMs in an administrative instruction (AI)—Delegations of authority should be based on an AI in accordance with section 3 of ST/SGB/2015/1 and Financial Rule 101.1 of ST/SGB/2013/4

I refer to your request for OLA's advice on whether the standing administrative measures ("SAMs") for crisis response and mission start-ups should be issued in the form of an administrative instruction ("AI").

We understand that some of the SAMs do not introduce new policies, but identify opportunities to introduce flexibility where necessary, within existing human resources

frameworks. You noted that, in the context of a recent Staff Management Committee meeting, staff raised concerns about using the form of an AI if some of the SAMs have already been promulgated in other AIs. Their concerns are based on the notion that the new AI would simply reproduce certain provisions from other AIs, without including important contextual Information from those AIs. Staff consider that such context needs to be taken into account to properly apply the already existing provisions contained in the new AI. Staff are also concerned that, if the same provisions exist in more than one AI, there might be uncertainty about which AI applies or takes precedence in any given situation. Staff suggest that, in view of those concerns, the format of an Information Circular ("IC") might work better.

While those concerns are understandable, we consider that they will ultimately not apply in the present case. The new AI will not simply reproduce existing provisions out of context, but will specify the particular circumstances and manner in which its provisions may be applied (*i.e.*, in start-up or crisis situations). For the same reason, there should be no uncertainty about which AI applies or takes precedence, as application of the new AI will only be triggered under very limited and expressly delineated circumstances (*i.e.*, by decision of the Secretary-General, who may then either terminate the SAMs or allow them to expire on their designated end date).

In our view, the SAMs should be set out in an AI. We note that several of the SAMs involve new delegations of authority ("DOAs"). For such DOAs, the issuance of an AI would be in accordance with section 3 of ST/SGB/2015/1 (Delegation of authority in the administration of the Staff Regulations and Staff Rules), which states that the USG/DM may delegate authority "through the issuance of an administrative instruction, including to heads of departments and offices, offices away from Headquarters, regional commissions and other entities." The issuance of an AI would also accord with Rule 101.1 of ST/SGB/2013/4 (Financial Regulations and Rules), which states that the USG/DM may "delegate, by administrative instruction, authority for specified aspects of the Financial Regulations and Rules. Such administrative instructions will state whether the delegated official may assign aspects of this authority to other officials."

It would technically be possible to issue AIs only for the new SAMs and then (or simultaneously) issue an information circular setting out the entire SAM framework along the lines of the recently issued Information circular ST/IC/2016/25 on the Anti-Fraud and Anti-Corruption Framework of the UN Secretariat. However, since most of the SAMs are new, it seems cleaner and simpler to issue only one AI with the entire framework.

We hope the above will assist you and we are happy to discuss if you have any questions.

[…]

28 October 2016

3. Procurement

(*a*) Inter-office memorandum to concerning the review of a Statement of Services for the fast track migration of United Nations email accounts from [Company] to [Company] pursuant to the Master Business Agreement between the United Nations and [Company] and its related agreements

NEED TO ELIMINATE THE RISK THAT A THIRD PARTY COULD ACCESS UNITED NATIONS DATA IN VIOLATION OF UNITED NATIONS PRIVILEGES AND IMMUNITIES—DECISIONS TO USE A PUBLIC CLOUD SHOULD BE REVIEWED BY THE RELEVANT ICT GOVERNANCE ENTITIES IN ACCORDANCE WITH RELEVANT ADMINISTRATIVE ISSUANCES

1. I refer to PD's request, dated 30 August 2016, seeking OLA's review of a draft Statement of Services between the United Nations and [Company] for the provision of services by [Company] to migrate the UN's email accounts from an IBM Domino 7 0 3+ source environment to [Software]. The Statement of Services will be signed by the UN and [Company] pursuant to, (*a*) the Master Business Agreement between the UN and [Company] ([…]), dated 16 April 2004 ("MBA"), and (*b*) the Master Services Agreement between the UN and [Company] dated 19 April 2004 ("MSA"), that was issued pursuant to the MBA. The services to be provided by [Company] are a benefit already included in and come as part of the [Software] licenses purchased by the UN. Accordingly, [Company] would not charge any additional fee for the performance of these services. However, [Company] requires a Statement of Services to be concluded between the parties in order to begin providing such services and to clarify the responsibilities of the parties under the proposed arrangement.

A. *Background*

2. In 2014, OLA assisted PD, in consultation with OICT, in negotiating the terms and conditions of seven (7) [Company] documents, […] (the "[Company] Documents"). OLA understands that as the email migration may eventually entail hosting of the bulk of UN users in the external cloud (with the balance of UN user mailboxes hosted in-premises), the optional Online Services[1] terms negotiated with [Company] in 2014 would become operational. […], OLA had highlighted generally the risks associated with the UN's use of cloud-based services, the terms and conditions for which are set forth in the document entitled, […].

3. The migration of UN email accounts to the external cloud raises considerations of security and confidentiality of UN data and issues in relation to the UN's privileges and immunities. When OLA assisted PD to negotiate the [Company] Documents referenced above, OLA included provisions in the applicable documents in order to address such concerns from the legal perspective, including provisions asserting the inviolability of UN data wherever located and by whomsoever held. However, the open nature of the public cloud means that UN data could be seized pursuant to subpoenas and, in the [State], for example, [Domestic legislation] orders, targeting other cloud tenants or even the UN itself Such actions would not be consistent with the UN's privileges and immunities as set forth in the 1946 Convention on the Privileges and Immunities of the United Nations ("UN Convention").

[1] As defined in the document, […] signed by the UN on 26 November 2014.

4. This was the case with the events that occurred in relation to the UN's contract with [Company] for the provision of the metropolitan area network, local telephony and internet services under Contract No. [date] (the "[Company] Contract"). In that case, on [date], the New York Times published an article entitled, *"[Company] Helped […] on Internet on a Vast Scale—emails in the billions—'partnership' included wiretapping at UN Headquarters"*. According to that article, [Company] provided technical assistance to the [State] in carrying out a secret court order permitting the wiretapping of all internet communications at the United Nations Headquarters. The [Company] Contract expressly prohibited [Company] from seeking or accepting instructions from any authority external to the United Nations in connection with the performance of [Company]'s obligations under the [Company] Contract and further stipulated that should any authority external to the UN seek to impose any instructions concerning or restrictions on [Company]'s performance under the [Company] Contract, [Company] would have to promptly notify the UN and provide all reasonable assistance required by the UN. In that case, the UN asserted its privileges and immunities under the UN Convention with the Member State concerned. But, such assertion could only be made after the violations had occurred. Accordingly, the Organization cannot eliminate the risk that a third party will gain access to UN data under the proposed arrangement.

B. *Business Case*

5. As noted in the last attachment to the enclosed memorandum dated 24 November 2014, titled the *"Statement by the Legal Advisers of the Specialized, Related and Other Organizations of the UN Common System with respect to the employment of cloud computing services,"* the Legal Network acknowledged that the use of the public cloud carries with it numerous benefits. Nonetheless, the Legal Network remained cautious about such use and emphasized that, in light of the potential implications of cloud computing on the privileges and immunities of the UN System Organizations, the decision to use the public cloud should be taken at the highest management or inter-governmental governance level. OLA has been provided with a copy of *"The United Nations Future Email System Project"* Business Case ("Business Case"), signed by three OICT officials in August 2015. OLA notes that Option 3 of the Business Case document: "Hybrid Exchange Infrastructure—Migrate directly the bulk of users to [Software] in the external cloud, with a selected group of users handling confidential information hosted in the in-premise Exchange," has been endorsed. However, it is not clear whether the policy decision contained in the Business Case document has been reviewed by the applicable boards and committees in the ICT Governance structure published on *iSeek* and in accordance with applicable administrative issuances, for example, ST/SGB/2003/17 and ST/AI/2005/10.

C. *Draft Statement of Services*

6. The enclosed draft Statement of Services has been developed alter extensive discussions among representatives of PD, OICT, OLA and [Company], and we understand that it is acceptable to both PD and OICT at the working level. As stated above, the attached Statement of Services is subject to the provisions of the Master Business Agreement and the Master Services Agreement and is, therefore, acceptable from the legal perspective.

Nevertheless, OLA recommends that PD, in consultation with OICT, review the enclosed Statement of Services in order to ensure that it accurately reflects the proposed arrangement from the commercial and operational perspectives, respectively. OLA also wishes to highlight for PD, in consultation with OICT, the matters set forth in the *Attachment* to this memorandum [Attachment omitted].

7. In relation to email archives, it is not clear in the draft Statement of Services whether the services being provided by [Company] thereunder would include any necessary computer protocol or applications to transition or recover data from UN users' email archives in the [Software] databases. As email archives are used by many UN users on a daily basis, if such matters are not already addressed in the Statement of Services, PD may wish to consult with OICT to see whether such matters would require further elaboration.

D. *Upcoming requirements*

8. We note that OLA was recently requested to review other [Company] documents in relation to the transition of UN email accounts to an [Software] environment by 31 December 2017. We also understand that additional requests may be forthcoming. Should OICT know now that it will be seeking further services from [Company] in relation to such migration or related matters and should further agreements need to be reviewed and negotiated with [Company], for which OLA's assistance will need to be sought over the next 12 months or so, we would appreciate receiving a copy of a Joint OICT and PD project plan showing OICT's upcoming requirements in order to assist OLA's planning for future requests and in order to better understand OICT's overall ICT strategy for the Organization. This should also assist OLA to provide advice on how to best manage upcoming Statements of Services or other [Company] documents in order to both meet OICT's timeframes and maintain a coherent set of agreements, together with their subordinate documents, with [Company].

30 September 2016

(*b*) Inter-office memorandum to the Director, Office of Central Support Services, Department of Management concerning the terms of a performance security required under a contract between the United Nations and a vendor

Letters of credit by vendors should conform with the United Nations standard form of letter of credit—United Nations policy and practice on outsourcing set forth in the General Assembly resolutions 55/232 and 59/289

1. I refer to PD's memorandum, dated 17 November 2016, requesting OLA's assistance in reviewing a draft irrevocable letter of credit proposed by [Company] in connection with Contract No. […] concluded between the UN and [Company] for the provision of personnel in support of Commercial Activities Services (the "Contract").

2. The Contract, which came into effect as of 1 November 2016, has an initial term that expires on 30 September 2019, with an option for the UN to extend the term for two additional periods of up to one year each. Article 9 of the Contract requires [Company] to provide a performance security in the form of a standby letter of credit or an independent bank guarantee in accordance with the form set forth in Annex D to the Contract, or a

similar instrument acceptable to the UN in its sole discretion, in the amount of US$ […]. According to article 9 of the Contract, [Company] was to provide such a performance security to the UN within ten days following the effective date of the Contract. We understand from PD's memorandum that, after the Contract was signed, [Company] submitted a draft irrevocable letter of credit which includes terms that are different than those set forth in the form of a standby letter of credit that PD provided to [Company] during the solicitation process for this requirement as well as article 9 of the Contract.

3. Based upon the foregoing, we have reviewed the draft irrevocable letter of credit proposed by [Company] and found it to be legally objectionable in several aspects, particularly as that draft provides that: (i) the letter of credit is due to expire in less than one year on 27 October 2017 contrary to the requirements of article 9.4 of the Contract, which states that the letter of credit must remain valid and in force until, at least, 30 December 2019; (ii) the letter of credit incorrectly states that the letter of credit is being issued by the issuing bank in connection with a lease agreement between the UN and [Company]; (iii) any legal action regarding the letter of credit must be commenced only in Supreme Court, State of New York, New York County; and (iv) the letter of credit will be governed by the substantive laws of the State of New York.

4. In view of the foregoing, and based on information provided by PD, we have drafted and enclose for PD's consideration a draft letter of credit for use in connection with the Contract ("Revised Draft"). The Revised Draft is largely based on the UN's standard form of letter of credit.

5. In order to ensure the suitability of the enclosed Revised Draft from commercial and operational perspectives, we recommend that PD review the Revised Draft and provide us with any comments that PD may have in order for us to further modify the Revised Draft to reflect PD's comments, prior to PD's sharing the Revised Draft with [Company]. However, if PD is satisfied with the Revised Draft, we suggest that PD forward it to [Company] for its consideration.

6. Based on the review of the Statement of Work included in the Contract, we note that the Contract requires [Company] to provide ushers, bus persons, administrative and clerical personnel ("Personnel") in support of the activities of the Special Services Section ("SSS") and the Travel and Transportation Section ("TTS") on an as-needed basis. It appears that the Contract is for the provision of manpower to support SSS's and TTS's operations, rather than a contract for the provision of services by [Company]. With respect to such Personnel, the Statement of Work attached to the Contract states that the UN will have the responsibility, *inter alia,* for: (i) managing the work of the Personnel; (ii) monitoring daily time and attendance of the Personnel; (iii) coordinating with the designated representative of [Company] on the Personnel's training, replacements, working hours/schedules, staff incidents, staff illness on the job, *etc.;* (iv) training the Personnel in the functions required for their individual assignment; and (v) providing evaluation of the Personnel every six months and providing feedback on performance as required. In this connection, we note that there is a risk that the various responsibilities assumed by the UN under the Contract could lead to the Organization being seen as the *de facto* employer of the Personnel, irrespective of contractual stipulations to the contrary, which could, in turn, expose the Organization to potential claims and liability. In order to minimize such

liability, we would recommend that the Organization enter into contracts with vendor providing such services in question rather than simply providing personnel or manpower.

7. Finally, it is unclear whether the procurement of the services to be provided by the Personnel under the Contract is in accordance with the Organization's policy and practice on outsourcing, which are set forth in the General Assembly resolutions 55/232 of 16 February 2001 and 59/289 of 29 April 2005. We recommend that PD, in consultation with SSS and TTS, review the activities to be undertaken under Contract in light of the criteria, guidelines and goals established by the General Assembly in its resolutions 55/232 and 59/289 in order to determine whether the engagement of the Personnel under the Contract conforms with the outsourcing practices of the Organization.

21 November 2016

ENCLOSURE: STANDBY LETTER OF CREDIT

Date [ ]

Beneficiary United Nations,

United Nations Headquarters

New York, NY

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: [ ]

1. At the request and for the account of […] ("Applicant"), we hereby issue our irrevocable documentary credit in your favor in the aggregate amount of USD […], effective immediately, which shall be available by sight draft or drafts presented at our office at [address], New York, New York, when accompanied by your signed and dated statement worded substantially as follows:

> "The undersigned representative of the United Nations ("Beneficiary") represents that the Beneficiary is entitled to draw upon the referenced letter of credit in the aggregate amount of USD […])"

2. We hereby engage to honor your drafts when presented in accordance with the terms of this credit.

3. Partial drawings are permitted. This letter of credit may be drawn down in multiple drafts.

4. This letter of credit is governed by the International Standby Practices (ISP98), ICC document No. 590.

5. This letter of credit expires with our close of business on 31 December 2019 it is a condition of this letter of credit that it shall be automatically extended, without amendment except as to the extended expiration date, for successive twelve month periods (and a final extension period that may be less than twelve months) up to and including 31 December 2021. We hereby agree to give you written notice of such extensions in writing not later than the (30th) thirtieth day preceding any date on which this letter of credit would otherwise expire, and on or before the same date of each year thereafter during the term hereof if for any reason we determine that this letter of credit shall not be extended, we hereby agree to send you written notice thereof in writing by certified mail, return receipt requested, at

least thirty (30) days prior to the expiration date in the event this credit is not extended for an additional period as provided above, you may draw up to the full balance hereunder.

6. Such drawing is to be made by means of a draft on us at which must be presented to us before the then expiration date of this letter of credit.

7. This letter of credit cannot be modified or revoked without your written consent.

8. Your rights under this letter of credit shall be performed strictly in accordance with the terms of this credit, irrespective of any lack of validity or uneforceability of the contract or the existance of any claim, set-off, defense or any other rights which the applicant may have against yourselves your rights under this credit shall be enforceable without the need to have recourse to any judicial or arbitral proceedings any obligations hereunder shall be fulfilled by us without any objection, opposition or recourse.

9. This credit is not transferable or assignable in any respect or by any means whatsoever.

10. Nothing herein or related hereto (i) shall be deemed a waiver or an agreement to waive any of the privileges and immunities of the United Nations, or (ii) shall be interpreted or applied in a manner inconsistent with such privileges and immunities.

Yours faithfully,

For and on behalf of […]

{Bank's Official Seal}

Name, Title

At sight, pay to the order of the United Nations the sum of […] United States dollars (USD […])

This Malt is presented pursuant to Letter of Credit No. [ ] issued by the drawee and dated [date]

The United Nations

Name

Title

Date

To […]

[Address of […]]

(*c*) Inter-office memorandum to the Director, Office of Central Support Services, Department of Management concerning the procedure for payment and reimbursement of excise duties under a fuel contract

Reimbursement of excise taxes for fuel locally purchased to the United Nations—Amendment of a contract to implement reimbursement procedures agreed between the United Nations, a vendor and a Member State is desirable—Exchange of letters as an alternative

1. I refer to PD's request for advice with respect to Contract No. […] (the "Contract") between the UN and [Company] in relation to the imposition and refund of excise taxes

on fuel purchased locally in [State]. I also refer to the various communications between representatives of OLA and PD, at the working level, in relation to this matter.

I. *Background*

2. The Contract was signed on [date]. Under the Contract, [Company] purchases bulk diesel locally from its subcontractor, [Subcontractor]. As part of the purchase price of such locally purchased fuel, [Company] is invoiced excise duty.

3. Until April 2016, [Company] had been seeking reimbursement of such excise duty from the [State] Revenue Authority […]. However, in April 2016 in a meeting, the [Revenue Authority] advised [Peacekeeping operation] and [Company] that only the tax-exempt entity, *i.e.,* [Peacekeeping operation], may directly receive tax exemption reimbursement from the Government. Accordingly, the Mission has suggested that instead of [Company] seeking reimbursement of such excise taxes, the Mission would have to do so, using the procedure agreed with the [Revenue Authority].

4. [Company] has also informed PD, *via* e-mail dated 26 June 2016, that it has not yet received reimbursement of excise duties amounting to US$ […], as a result of the [Revenue Authority]'s requested change in procedure for reimbursement of excise duties.

5. OLA understands that both the Mission and [Company] have asked PD whether an amendment to the Contract needs to be concluded in order to reflect the fact that [Company] should pay the excise tax on locally purchased fuel and invoice the Mission for such excise tax. More specifically, PD is seeking OLA's advice, (i) on whether an amendment to the Contract is necessary in order to implement the reimbursement procedures agreed between the UN, [Company] and the [Revenue Authority], and (ii) if the inclusion of excise duties into the Contract for the purpose of outlining the reimbursement procedures is acceptable.

II. *The Memorandum between the United Nations and [State]*

6. The Memorandum of Understanding between the United Nations and [State] concerning the use of Facilities at […] by the United Nations, dated 20 July 2010 ("MOU")[1] provides, in article VIII, in relevant part as follows:

> "1. (*c*) *Fuel* and lubricants for United Nations' official use and activities may be imported, exported or *purchased in [State] free of* customs duties, and *all taxes*, prohibitions and restrictions". (Emphasis added).
>
> 2. "In respect of equipment, provisions, supplies, *fuel*, materials and other goods and services purchased in [State], or otherwise imported into [State] for the official and exclusive use of the United Nations, [State] shall make appropriate administrative arrangements for the *remission of any excise tax*, or monetary contribution payable as part of the price, including value added tax (VAT)." (Emphasis added).

[1] OLA notes that an earlier MOU, the "Memorandum of Understanding between the United Nations and [State] concerning the activities of the [Peacekeeping operation] in [State]" was signed between the UN and the Government of [State] on [date].

III. *Conclusion*

7. While both paragraphs in the MOU refer to the purchase of fuel locally and exemption from certain taxes on such purchases, paragraph 2 makes specific reference to "excise tax". In this connection, the MOU contemplates that in respect of fuel purchased in [State], the Government shall make appropriate administrative arrangements for the remission of excise tax. Accordingly, it is for the United Nations (represented by [Peacekeeping operation]) to seek reimbursement of the excise taxes which [Company] incurs when purchasing fuel locally for the official purposes of [Peacekeeping operation] and for [Peacekeeping operation] to seek such reimbursement.

8. In order to ensure that such reimbursement occurs smoothly, it is important that there is a clear understanding between the Mission, the Government and [Company] about the procedures to be followed when [Company] purchases the fuel locally and incurs excise taxes *(e.g.,* (*a*) the documents to be obtained and to be passed to the United Nations for the reimbursement process including, OLA assumes, evidence that the excise tax has been paid to the Government in each instance). It would be advisable to obtain the Government's requirements for such procedure in writing.

9. While it is not necessary to include this procedure in a Contract amendment from the legal perspective, should the Parties wish to do so, they certainly could but only with respect to the arrangements between the UN and […] The UN's arrangements with the Government are outside the scope of the Contract. An amendment may be desirable in order to provide clarity for both the UN and [Company] and provide [Peacekeeping operation] with the mechanism "to open a dedicated excise duty budget line and use the funds to pay the excise duty portion to [Company] and replenish the line by receiving the refunds from the [Revenue Authority]".[2] Alternatively, the Parties could reflect the procedure in an exchange of letters.

10. While PD has not requested advice in relation to the US$ […] that [Company] has not been reimbursed by the Government *(see* paragraph 4, above), OLA recommends that [Peacekeeping operation] work with [Company] and the Government in order to resolve this issue amicably and as soon as possible. If, after such consultations, it is determined that [Company] invoice the United Nations for the US$ […] in order to enable the UN to seek reimbursement from the Government, OLA recommends that [Peacekeeping operation] first consult with the Government in order to verify the procedure to be followed in relation to this amount as well as the documents required for the refund to be processed.

20 December 2016

(*d*) Inter-office memorandum to the Director, Office of Central Support Services, Department of Management concerning the suspension of a vendor from the United Nations Register of Vendors

The Procurement Division has sole authority over vendor registration and management pursuant Chapter 7 of the United Nations Procurement Manual—Article 7.13 (2) of the United Nations Procurement Manual requires the suspension or removal of vendors from the Register of

[2] See [Peacekeeping operation] Note-to-File, dated 24 June 2016, paragraph 3.

VENDORS TO BE "BASED ON SUBSTANTIAL AND DOCUMENT EVIDENCE"—THE PROCUREMENT MANUAL GENERALLY REGULATES VENDORS AT THE CORPORATE LEVEL AND NOT WITH INDIVIDUALS ASSOCIATED WITH VENDORS—PROCUREMENT DIVISION'S PRACTICE OF ENTERING A NOTE TO FILE REGARDING INDIVIDUALS ASSOCIATED WITH A VENDOR

1. I refer to PD's memorandum, dated 15 September 2016, seeking OLA's advice regarding a recommendation by the Vendor Review Committee ("'VRC") to suspend from the UN's Register of Vendors [Name], founder and CEO of suspended vendor [Company]. I also refer to subsequent communications between representatives of our Offices, at the working level, regarding this matter.

Background

2. We understand from the documents provided to OLA that on 31 July 2014, based on VRC's recommendation at VRC […] of [date], the ASG/OCSS decided to suspend [Company] from the Register of Vendors due to significant performance issues under [Peacekeeping operation] Contract […]. Following the ASG/OCSS's decision to suspend [Company], [Company] requested review of the suspension decision, and [Company]'s vendor registration status was again reviewed by the VRC at […] of [date]. At that meeting, VRC took note of the fact that [Company] had not requested reinstatement and concluded that no changes to the registration status were required. According to the minutes of VRC meeting […] of [date], during the suspension period, [Company] was not eligible for new contract awards, and [Company] and its subsidiaries were not be permitted to participate in any new solicitations. It is our understanding that, to date, [Company] remains listed as an "ineligible vendor" in UNGM [United Nations Global Marketplace] and as a "suspended vendor" on the UN's Register of Vendors.

3. By a memorandum, dated 19 August 2016, DFS provided PD with OIOS report No. […], dated [date] ("OIOS Report"), regarding an OIOS audit of [Company] in relation to a different [Peacekeeping operation] Contract, […]. The OIOS Report found that:

(i) [Name], [Company], failed to cooperate in an authorized OIOS investigation, as stipulated in paragraph 23.2 of the United Nations General Conditions of Contract (signed as part of contract […]; and

(ii) [Company] failed to provide OIOS investigators with separate and complete records as stipulated in Article 14 of contract […].

4. The OIOS Report concluded that "[t]he established facts constitute[d] reasonable grounds to conclude that [Name] and [Company] failed to comply with Article 14 of contract […] and paragraph 23.2 of the United Nations General Conditions of Contract." Based on the above, OIOS recommended that: (1) "[Company] be removed from the United Nations Procurement Division Approved Vendor List[;]" and (2) "[Name] be removed from the United Nations Procurement Division Approved Vendor List[.]"

5. On 2 September 2016, noting DFS's memorandum of 19 August 2016, the VRC reviewed [Company]'s and [Name]'s status in VRC meeting […]. The VRC again noted that since its Suspension in July 2014, [Company] had not requested to be reinstated and remained as a suspended vendor. Therefore, the VRC recommended no further action with respect to [Company] itself. The VRC also recommended that [Name] be added to PD's suspension list.

Analysis

6. The issue raised by the VRC's recommendation at VRC meeting […] is whether [Name] should be named individually on PD's suspension list for actions taken in his capacity as CEO of [Company], and based on the findings summarized in the OIOS Report.

7. At the outset, we note that determinations with respect to vendor registration and management, including the maintenance of vendor files and the Register of Vendors, as well as the recommendation of vendor suspension and removal, are decisions within PD's authority pursuant to chapter 7 of the UN Procurement Manual (rev. 7, 2013). As OLA has advised in similar cases involving potential suspension or removal of vendors, the UN should scrupulously adhere to the procedures set forth in the Procurement Manual, regarding the criteria for suspension or removal of a vendor from the Register of Vendors. The authority to suspend a vendor, whether temporarily or indefinitely, or to remove a vendor from the Register of Vendors, lies only with the ASG/OCSS. The ASG/OCSS's decision is based on the review and recommendation of the VRC and, pursuant to article 7.13(2) of the Procurement Manual, must be "based on substantial and documented evidence."

8. Article 7.13 of the Procurement Manual does not specifically provide for the suspension of a vendor's owners, principals or agents in their individual capacity. Generally, the provisions of chapter 7 of the Procurement Manual regulate the Organization's relationship with a vendor at the corporate level, *i.e.*, with the vendor as a legal entity rather than with individual representatives of the vendor. For example, articles 7.4 to 7.9 and 7.11 generally refer to the registration and management of legal entities which meet the registration requirements set forth therein and which have the formal status of vendors registered with PD, and not to the individuals associated with such registered vendors in their personal capacity. Articles 7.13–7.15 deal with the Suspension of registered vendors, not individuals associated with those vendors.

9. In the present case, the VRC has recommended that [Name], who is not a registered UN vendor himself, be named individually on PD's list of suspended vendors for actions taken in his capacity as CEO of [Company]. Such course of action is not expressly addressed by the provisions of chapter 7 of the Manual. Moreover, we understand from PD that such suspension would not be consistent with PD's practice. We understand from communications between our offices, at the working level, that, in PD's practice, agents of registered UN vendors are not usually listed as suspended vendors in their individual capacity. PD has also indicated that, on a limited number of occasions, it has only listed named individuals who have been placed under prohibition by the UN Security Council.

10. We further understand that, in PD's practice, the names of such individuals are entered in the form of a note to file for the respective vendor. In OLA's view, it would be within the purview of PD's discretion under chapter 7 of the Procurement Manual, to place a note under [Company]'s file with respect to [Name], in his capacity as officer of [Company], provided that any note regarding [Name] is based on substantial and documented evidence that supports the content of such note.

11. Finally, we note that [Company]'s original suspension was related to contract CON/MIN/10/068, and its conduct with respect to that contract is not at issue in the present case. Therefore, a separate determination would need to be made with respect to whether the actions of [Company] and those of [Name] in his capacity as officer of [Company] with respect to contract CON/MIN/10/084 amounted to conduct warranting Suspension of

the vendor. As already noted above, under article 7.13(2) of the Procurement Manual, the decision whether to suspend must be "based on substantial and documented evidence." Therefore, in deciding whether to proceed with placing a note on [Name] in [Company]'s file, PD and the ASG/OCSS should satisfy themselves that such decision is based on "substantial and documented evidence" sufficient to support the imposition of a measure of suspension.

22 December 2016

(*e*) Inter-office memorandum to the Assistant Secretary-General, Office of Central Support Services, Department of Management concerning the procurement of heavy engineering capabilities in Africa using voluntary contributions

Treatment of voluntary contributions for a specific purpose as trust funds or special accounts under Financial Regulations 4.13 and 4.14—Trust funds or special accounts are administered in accordance with the Financial Regulations—Exercise of procurement functions under Financial Regulation 5.12 and Financial Rules 105.13 through 105.19—Goods and services must be procured through a competitive international solicitation exercise

1. I refer to your memorandum, dated 20 October 2016, requesting OLA's advice regarding the procurement of heavy engineering equipment ("HEE") and other related equipment required in connection with the implementation of phase III of the United Nations triangular partnership project for rapid deployment of engineering capabilities in Africa ("Project").

Background

2. We understand from your memorandum and DFS's memoranda to DM, dated 29 June 2015, 8 February 2016, and 18 August 2016, copies of which were attached to your memorandum, that the Project involves a proposed partnership arrangement among (i) the Government of [State] ("Government") which has offered to the United Nations a voluntary contribution in the amount of US$ […] to fund the Project; (ii) the Secretariat, which is tasked with implementing the Project; and (iii) various troop contributing countries, whose engineering contingents would be trained to "deploy with strong horizontal engineering capabilities and full set of Heavy Machinery to rapidly engage on high priority mission horizontal engineering tasks."[1] We further understand from DFS's memoranda that, of the three phases that comprise the Project, phase I of the Project was completed in October 2015 and phase II of the Project was expected to be completed in October 2016.

3. According to DFS's 18 August 2016 memorandum to DM, phase III of the Project involves the UN's procurement of HEE and related equipment for both training and operational use. The cost of such equipment to be procured is estimated by DFS to be US$ […] million. Concerning the procurement of HEE and related equipment, DFS stated in its 18 August 2016 memorandum to DM that:

> "Given the high-risk, expensive nature of the equipment as well as the high-visibility and multi-lateral nature of the project, uncompromising safety, reliability and avoidance

[1] UN Project Document/Project Initiation Document (25 March 2016), page 8.

of liability remain fundamental requirements for the equipment to be procured. It is, therefore, essential that the equipment procured be *similar* to the equipment procured for phases I and II." (Emphasis added).

In addition, DFS stated in that same memorandum that:

"The current United Nations systems contracts for engineering, equipment and vehicles only cover only about 45 percent of the total equipment required for the project; none of these are brands that the [State] training teams are accustomed to. Thus, procuring from the systems contracts will not fit the project needs. In this respect, consideration should be given to conducting a separate solicitation for the required equipment."

Applicable Financial Regulations and Rules

4. As a preliminary matter, we note that under Financial Regulation 3.12 "[v]oluntary contributions, whether or not in cash, may be accepted by the Secretary-General provided that the purposes for which the contributions are made are consistent with the policies, aims and activities of the Organization and provided further that the acceptance of voluntary contributions that directly or indirectly involve additional financial liability for the Organization shall require the consent of the appropriate authority." Financial Rule 103.4(*a*) provides that "[i]n cases other than those approved by the General Assembly, the receipt of any contribution, gift or donation to be administered by the United Nations requires the approval of the Under-Secretary-General for Management." Pursuant to Administrative Instruction ST/AI/2016/7, concerning the delegation of authority under the Financial Regulations and Rules, the authority and responsibility to implement Financial Rule 103.4 has been delegated to the Controller. Therefore, the acceptance of the Government's donation would require the Controller's approval. Moreover, the Government's donation should be accepted pursuant to an appropriate written contribution agreement between the UN and the Government setting out the terms and conditions of the donation.

5. With respect to the Government's donation of US$ […], the Government stated in its note verbale to the UN Secretariat, dated 24 February 2015, that the Government is contributing the US$ […] specifically for the purpose of funding the Project. Financial Regulation 3.13 provides that moneys accepted for purposes specified by the donor, such as the Government's contribution for the Project, must be treated as trust funds or special accounts under Financial Regulations 4.13 and 4.14 relating to such funds and accounts. Pursuant to Financial Regulation 4.14, unless otherwise provided by the General Assembly, such funds and accounts must be "administered in accordance with the present Regulations." Therefore, the moneys received from the Government for the purpose of supporting the Project must be administered in accordance with the relevant Financial Regulations and Rules, including those relating to the procurement of goods and services by the Organization. Indeed, the Government's note verbale to the UN Secretariat stipulates that:

"The Permanent Mission of [State] to the United Nations has further the honour to request the DFS to assure …

(2) The Contribution will be used appropriately and exclusively for the execution of the Project *in accordance with the United Nations Financial Regulations and Rules* …"[2] (Emphasis added).

Hence, it would appear that one of the conditions of the Government's contribution to the Project is that the UN Secretariat utilizes the moneys contributed by the Government in accordance with the relevant Financial Regulations and Rules, which would surely include those governing the Organization's procurement activities, namely, Financial Regulation 5.12 and 5.13 and Financial Rules 105.13 through 105.19.

6. Financial Regulation 5.12 states that when exercising procurement functions of the United Nations, due consideration should be given to: (i) best value for money, (ii) fairness, integrity and transparency, (iii) effective international competition, and (iv) interest of the United Nations. Further, Financial Rule 105.14 provides, in relevant part, that:

"Consistent with the principles set out in regulation 5.12 and except as otherwise provided in rule 105.16, procurement contracts shall be awarded on the basis of effective competition, and to this end the competitive process shall, as necessary, include:

…

(*b*) Market research for identifying potential suppliers;

(*c*) Consideration of prudent commercial practices;

(*d*) Formal methods of solicitation …"

Above cited Financial Regulations and Rules require that procurement activities undertaken by the Organization must be conducted on the basis of effective and fair competition, except when using formal methods of solicitation is not in the interest of the UN as provided under Financial Rule 105.16.

7. Regarding the procurement of HEE and related equipment required for phase III of the Project, your memorandum to OLA of 20 October 2016 states, in paragraph 4, that you are "concerned about the limitation of using only [State] brand equipment …" I note, however, that DFS's 18 August 2016 memorandum to DM does not state that PD should limit the procurement of HEE and related equipment to [State] brand equipment. Rather, as quoted in paragraph 3 above, DFS has requested that HEE and related equipment to be procured for phase III of the Project be "*similar* to the equipment procured for phases I and II." (Emphasis added). Thus, in procuring HEE and related equipment to meet the requirements of the Project, the Organization could procure from any vendors, regardless of their nationality, who are capable of supplying to the Organization equipment that have *similar* functionalities as the ones that have been utilized in the earlier phases of the Project. We agree with your concern that limiting the procurement of HEE and related equipment to only one [State] brand or only to vendors from [State] to the exclusion of equipment supplied by vendors from all other Member States would be inconsistent with the Financial Regulations and Rules and, as noted in paragraph 5 above, contrary to terms of the Government's contribution. Accordingly, if the Government's contribution is accepted, all involved should understand that HEE and related equipment to be procured under the Project will be similar only in functionality to the equipment used in phases I

[2] Note Verbale from Permanent Mission of [State] to the United Nations to the Department of Field Support of the United Nations (SC/15/061), dated 24 February 2015, paragraph 2(2).

and II of the Project but that, otherwise, such equipment would be sourced through a competitive international solicitation exercise.

8. For all of the above reasons, and based on the information and documentation made available to OLA, we would stress the need for the Organization to adhere scrupulously to the relevant regulations and rules of the Organization and the procedures set forth in the Procurement Manual in carrying out the Organization's procurement of HEE and other related equipment required for phase III of the Project.

22 December 2016

(*f*) Inter-office memorandum to the Director, Office of Central Support Services, Department of Management concerning the failure of a government to respect a peacekeeping operation's exemption from taxation on fuel imported for the official activities

Whether a peacekeeping operation may "suspend" the reimbursement of taxes paid by a vendor to a government—Payment of taxes by the vendor in good faith—Whether a vendor should stop paying taxes due to government failure to reimburse—Possibility to "pay under protest" and with notice regarding the privileges and immunities of the United Nations—Whether the United Nations would be responsible for reimbursing a vendor for additional taxes

1. PD is seeking OLA's advice with respect to [Company] request for reimbursement of taxes and duties (the "Taxes") paid by [Company] to the Government of [State] (the "Government") in respect of fuel imported for the exclusive use of [Peacekeeping operation].[1] The Government has, since April 2015, been requiring [Company] to pay such Taxes in contravention of the Agreement between the United Nations and the Government of [State] in relation to the [Peacekeeping operation], signed on [date] (the "SOFA"). PD is also seeking advice on two other matters, as set forth in sections I and IV of this memorandum. As the background to this matter is extensive, OLA has summarized the salient facts in the *Attachment* to this memorandum and set forth PD's three questions, together with the short answer to each, immediately below. I also wish to refer to the various communications between representatives of OLA, PD and [Peacekeeping operation], at the working level, in relation to this matter.

II. *Questions and short answers*

Question 1. (*a*) Is [Peacekeeping operation] entitled to "suspend" reimbursement of the Taxes paid by [Company] to the Government, for which [Peacekeeping operation] advised [Company] to pay?

Short Answer: No. [Peacekeeping operation] should promptly reimburse [Company] the Taxes [Peacekeeping operation] instructed [Company] to pay, after obtaining the applicable evidence set forth in paragraph 7 of this memorandum.

[1] The United Nations signed a Fuel Supply and Services Agreement with [Company] in support of the [Peacekeeping operation], effective [date], Contract No. […] (the "Contract").

(*b*) If the answer is no, then should [Peacekeeping operation] pay [Company] the outstanding balances of Taxes paid under instruction from [Peacekeeping operation]?

Short Answer: Yes.

Question 2. Should [Company] stop paying the Taxes to the Government?

Short Answer: This is an operational matter for [Peacekeeping operation], in consultation with DFS.

Question 3. Will the UN be responsible for reimbursing [Company] in the event that the Government imposes additional taxes, charges and/or other costs on [Company] as a result of [Peacekeeping operation]'s instructions to [Company] that it register a local company in order to benefit from the tax exemptions already provided for under the SOFA?

Short Answer: The question of how a contractor organizes itself in the country of operation is not a matter for the United Nations. Moreover, as [Company] has not made a claim for any taxes, charges or other costs incurred as a result of registering a local company, it is not possible to provide legal advice on this matter.

II. *Background*

2. […].

III. *The SOFA and the Contract*

3. The SOFA provides, in relevant part that [Peacekeeping operation] and its contractors are exempt from taxes, duties and charges on the import of fuel for the exclusive use of [Peacekeeping operation]. (See paragraphs 1(*g*) and 15(*a*) of the attached SOFA)

4. The Contract provides in section 17.1, in relevant part, that in the event a governmental body refuses to recognize the UN's tax exempt status, the Contractor:

> "shall immediately notify and consult with the UN to determine a mutually acceptable procedure. Contractor authorizes the UN to deduct from Contractor's invoice any amount representing such taxes, duties or charges, unless Contractor has consulted with the UN before the payment thereof and the UN has, in each instance, specifically authorized Contractor to pay such taxes, duties or charges under protest with written notice to the Governmental Body stating that such payment is made subject to, and without any waiver of, the privileges and immunities of the UN. In that event, Contractor shall provide [Peacekeeping operation] with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized."

IV. *Legal analysis of PD's three questions*

Question I. (*a*) Is [Peacekeeping operation] entitled to "suspend" reimbursement of the Taxes paid by [Company] to the Government, for which [Peacekeeping operation] advised [Company] to pay?

5. In apparent contravention of the provisions of the SOFA, the Government has been charging [Peacekeeping operation]'s contractor ([Company])—through [Company]'s sub-contractor ([Sub-contractor])—taxes and duties on the fuel imported for [Peacekeeping

operation]'s official use. As a result, [Company] consulted with the United Nations, as it was required to do under section 17.1 of the Contract, in order to request advice on how to proceed. Due to the mission critical requirement for a constant supply of fuel, on 16 April 2015 by way of letter to [Company]'s General Manager, [Peacekeeping operation] authorised [Company] to pay fuel taxes while [Peacekeeping operation] continued to engage the Government in order to seek to have the fuel tax removed from the fuel purchased by [Company] for the exclusive use of [Peacekeeping operation]. On 10 February 2016, in an email message from [Peacekeeping operation] to PD, at the working level, the Mission indicated in relevant part that, "The Mission will allow the contractor to pay the taxes in order to avoid supply disruption while the issue will be escalated to a higher level". In addition to the various correspondence and meetings between [Company] and [Peacekeeping operation] and [Company] and PD, on 16 December 2015, by way of letter to the Director/PD, [Company] informed PD of the above arrangements with [Peacekeeping operation], and among other things that [Company] had been paying taxes and duties to the Government on the basis of the 16 April 2015 letter from [Peacekeeping operation]. In conclusion, [Company] indicated that it would continue to supply the fuel and services to [Peacekeeping operation] on the basis of the current arrangements until [Company] is instructed otherwise. In particular, and among other things, [Company] asked PD to advise if [Company] should stop paying the taxes and duties and if [Company] is required to stop paying the taxes that PD confirm [Company] may draw on the local reserves and strategic fuel reserve to meet operational requirements OLA understands that no letter was sent to [Company] in response to its 16 December 2015 letter.

6. On the basis of the facts made known to OLA, it appears that [Company] has proceeded to pay the Taxes on fuel imports in reliance of its good faith belief that [Peacekeeping operation] would reimburse the Taxes paid. In this regard, [Company] would also be able to rely on its letter to PD, dated 16 December 2015, wherein [Company] asked PD if it should stop paying such taxes on the basis of [Peacekeeping operation]'s April 2015 authorisation and the fact that [Company] was not subsequently told to stop paying such taxes. Accordingly, the United Nations is, by its conduct, prevented (estopped) from claiming that [Company] should not have paid such Taxes and that [Peacekeeping operation] is entitled to go back on its promise to reimburse such Taxes. As [Company] has been carrying the financial burden of the Taxes from July 2015 (US$ […] as of June 2016), OLA recommends that [Peacekeeping operation]—subject to the points raised in paragraph 7, below—reimburse [Company] without delay.

7. Prior to making such payments, OLA recommends that [Peacekeeping operation] undertake—without delay—the following due diligence, to the extent that such documentation is not already available:

(*a*) Evidence that the taxes and duties on fuel imported for the exclusive use of [Peacekeeping operation] were invoiced by the Government to [Company] (or [Sub-contractor], as applicable, as the sub-contractor of [Company]);

(*b*) Evidence that the taxes and duties were paid to the Government *(e.g.,* receipts);

(*c*) If the taxes and duties were paid by [Sub-contractor] to the Government, OLA recommends that [Peacekeeping operation] obtain evidence that [Company] has made such payments to [Sub-contractor]. [Peacekeeping operation] should satisfy itself that such

Taxes were paid solely in relation to fuel imported for the exclusive use of [Peacekeeping operation] under the Contract.

Question 2. Should [Company] stop paying Taxes to the Government?

8. While the Government's conduct in requiring that such Taxes be paid is in apparent contravention of the SOFA, as [Peacekeeping operation] has repeatedly informed DFS that fuel supply is a mission critical requirement, that [Company] will not keep supplying fuel without being reimbursed the Taxes, and the Mission has confirmed in several communications that it cannot afford any disruption of the fuel supply chain, OLA considers this to be an operational matter for [Peacekeeping operation], in consultation with DFS. DFS may wish to send a Note Verbale to the Permanent Mission of [State] to the United Nations in order to request the Permanent Mission to obtain the assurance of the Government that, in accordance with the provisions of the SOFA, the Government will respect the exemption from taxation and other charges for fuel and lubricants imported for the official purposes of the United Nations. We would appreciate receiving a copy of the Note Verbale once it has been sent.

Question 3. Will the UN be responsible for reimbursing [Company] in the event that the Government imposes additional taxes, charges and other costs on [Company] as a result of [Peacekeeping operation]'s instructions to [Company] that it register a local company in order to benefit from the tax exemptions already provided for under the SOFA?

9. While it is not possible to advise on this matter in the absence of specific facts indicating that [Company] has incurred additional taxes, charges and other costs as a direct result of having registered as a local company, and without knowing the local law in [State], OLA notes that [Peacekeeping operation] did instruct [Company] to register locally for the benefit of the UN obtaining its right to an exemption from tax on fuel imports. OLA also notes that the Mission has confirmed that the Government has provided nothing in writing to either [Peacekeeping operation] or [Company] indicating that [Company] has to be registered locally in order for the UN to benefit from its tax exempt status in relation to the importation of fuel for [Peacekeeping operation].

10. OLA recommends that, in the future, the Mission refrain from advising contractors about whether they should or should not register a local company as the manner in which a contractor organises itself in a country is for the contractor to determine and must be in accordance with applicable laws.

V. *OLA recommendations*

11. OLA recommends that in order to avoid both, (i) disruption to the fuel supply in support of [Peacekeeping operation], and (ii) this matter escalating into a dispute, prompting [Company] to claim interest on the amount of the fuel taxes that have not been reimbursed to date, that [Peacekeeping operation] reimburse [Company] without any further delay, subject to satisfying itself of the matters set forth in paragraph 7 of this memorandum.

12. OLA also recommends that, in future, if [Peacekeeping operation] instructs a third party to pay taxes, duties and/or charges to an authority for which the UN is exempt, that it ensure such instructions require such third party to "pay under protest", as contemplated in section 17.1 of the Contract and, more importantly, to place the applicable

Governmental authority on notice that the UN is maintaining its status and its privileges and immunities in respect of such matter.

22 December 2016

4. Liability and Responsibility of the United Nations

Note to Heads of Secretariat Departments and Offices and Funds and Programmes concerning General Assembly resolution 70/114 on the Criminal Accountability of United Nations Officials and Experts on Mission

Reporting obligations of the Secretary-General regarding criminal accountability of United Nations Officials and Experts on Mission—Request that all credible allegations of criminal conduct be forwarded to the Office of Legal Affairs, whether or not the entity recommends a referral to the State of nationality—Programme Managers should submit investigation reports and other documents that have already been redacted—Guidelines for redaction of investigation reports and other documents

1. I refer to General Assembly resolution 70/114 on Criminal accountability of United Nations officials and experts on mission […], dated 14 December 2015. The General Assembly, as it has in the past, requests the Secretary-General to bring credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals the allegations are made, and to seek updates from those States on the status of their efforts to investigate and, as appropriate, prosecute crimes of a serious nature. The General Assembly also requests the Secretary-General to report on the implementation of its resolution to the General Assembly.

2. The obligations of the Secretary-General under the resolutions on criminal accountability have generally remained uniform since the 62nd session, however with resolution 70/114, the General Assembly has expanded the Secretary-General's reporting obligations. In particular, paragraph 25 describes the information to be provided with respect to each case, as follows: "the United Nations entity involved, the year of referral, information about the type of crime and summary of allegations, status of investigations, prosecutorial and disciplinary actions taken, including with respect to individuals concerned who have left the duty mission or the service of the United Nations, any requests for waivers of immunity, as applicable, and information on jurisdictional, evidentiary or other obstacles to prosecution, while protecting the privacy of the victims as well as respecting the rights of those subject to the allegations". The General Assembly requests that this information be provided for all referrals dating back to 1 July 2007, the year the Secretary-General began reporting on referrals.

3. The General Assembly reiterates its request in resolution 70/114 for the Secretary-General to refer all credible allegations of criminal conduct by United Nations officials and experts on mission to their States of nationality. Accordingly, I kindly request that all credible allegations continue to be forwarded to OLA, whether or not the entity recommends a referral. Typically, such allegations have resulted from substantiated findings by an investigative entity.

4. Under current practice, the Programme Manager forwards relevant reports to OLA's attention for review and OLA subsequently liaises with the investigative entity, as well as the substantive office prior to effecting referrals, in order to ascertain whether any information contained in the investigation reports or other documents proposed for inclusion in any referral to a Member State need redaction. While this consultation ensures that the Organization does not release sensitive information, it can take time and cause delays in the referral process. In order to address this, I kindly request, going forward, Programme Managers to provide OLA with investigation reports and other documents that have already been redacted, alongside a copy of the unredacted original versions. Redactions should be limited to information which, if disclosed, would (i) present a risk to the safety of any individual, (ii) violate a duty of confidentiality which the United Nations owes to a third party, (iii) compromise the confidentiality of the Organization's internal decision-making process, or (iv) impede the effective functioning of current or future operations of the United Nations. OLA will consult the Programme Managers or the investigative entity, as needed, regarding the redacted information.

5. Finally, pursuant to the request of the General Assembly, please be informed that the Secretary-General's report on the implementation of resolution 70/114 will contain information on all cases referred since 1 July 2007.

29 January 2016

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. International Labour Organization

(submitted by the Office of the Legal Adviser of the International Labour Office)

Legal opinion rendered during second meeting of the Standards Review Mechanism Tripartite Working Group (10–14 October 2016)[1]

Distinction between abrogation of Conventions in force and withdrawal of Conventions that never entered into force or are no longer in force—Juridical replacement of "superseded" or "revised and replaced" Recommendations—Possibility of a self-governing non-metropolitan territory to be bound by a Convention—"Shelving" of instruments as "administrative" arrangements

1. The Legal Adviser provided clarifications to the Standards Review Mechanism Tripartite Working Group (SRM TWG) in relation to certain legal questions that were raised during the course of its discussions.

2. With regard to the distinction between abrogation of Conventions in force and withdrawal of Conventions that either had never entered into force or were no longer in force due to denunciations, the Legal Adviser explained that this distinction was made from the outset,[2] and was based on the "contractual" theory about international labour Conventions, namely the idea that international labour Conventions, once ratified by two or more States and entered into force, became contracts among the States Parties and this explained why the Conference needed explicit constitutional authority to be able to terminate the legal effects of an obsolete instrument. *A contrario*, where a Convention had not received the minimum number of ratifications to enter into force, or the number of effective ratifications had been reduced—as a result of denunciations—to zero or one (thus no longer qualifying as a treaty), the International Labour Conference did not need an express mandate to proceed with the termination of the legal effects of that Convention.[3] In this latter case, the term "withdrawal" was proposed and retained throughout the process of adoption of the 1997 constitutional amendment. In all other cases, the term "abrogation" should be used, which would also be in accordance with article 55 of the 1969 Vienna Convention on the Law of Treaties. It was on this basis that Convention No. 28, which currently had one effective ratification, was placed on the agenda of the 106th Session (2017) of the Conference for possible withdrawal and the SRM TWG might wish to consider the same follow-up action with regard to Convention No. 34 which was in exactly the same situation. The Legal Adviser further clarified that following the entry into force of the 1997 constitutional amendment, the distinction between abrogation and withdrawal of

[1] See GB.328/LILS/2/1, Annex II, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_534130.pdf.

[2] Provisional Record No. 1, International Labour Conference, 85th Session, Geneva, 1997, para. 13, p. 1/5; GB.283/LILS/WP/PRS/1/2, para. 37, p. 15.

[3] As it was explained at the time of drafting the 1997 constitutional amendment, to argue that a Convention with only one ratification was still in force would not be in accordance with either the usual interpretation of the term "Convention" or the contractual theory itself, which implied at least two parties; see GB.265/LILS/WP/PRS/2, para. 18, p. 7.

Conventions had lost much of its importance since the same procedural guarantees applied to both in terms of Conference majority required, consultation process and timelines for submission to the Conference.

3. In response to the question as to whether or not obsolete international labour Recommendations which have been explicitly replaced or superseded by later Recommendations should be subject to the withdrawal process, the Legal Adviser explained that in case a Recommendation was expressly replaced by another one (normally through a final provision stating that the latter instrument supersedes the former), one could validly argue that there was no text to be withdrawn and that therefore the withdrawal exercise would be without object. This would also be consistent with the ordinary meaning of the term "supersede" which was to "take the place of", "set aside as void", "succeed to the position", "remove" or "override". He further indicated that the procedural guarantees for the adoption or withdrawal of a Recommendation being substantively similar (extensive consultations, record vote, two-thirds majority), there was little value in proposing to the Conference to initiate a formal process of withdrawal of an instrument which it had already decided to replace by adopting a new instrument to that effect. In contrast, an international labour Recommendation which was merely revised by another Recommendation (for instance through a reference in the Preamble indicating the need for revision)—without being explicitly replaced or superseded—should be subject to the withdrawal procedure in accordance with article 45*bis* of the Standing Orders of the Conference. This was, for instance, the approach followed in 2002 for the withdrawal of 20 Recommendations; as the Conference report read, "the Recommendations were considered as having been superseded 'de facto', that is by instruments relating to the same subjects and subsequently adopted by the Conference, without their replacement having been expressly indicated by the Conference".[4] The Legal Adviser recalled that the distinction between Recommendations that had been replaced by express decision of the Conference—"*juridically replaced*"—and Recommendations that had become obsolete following the adoption of subsequent standards on the same subject—"*de facto replaced*"—had guided the work of the Cartier Working Party with respect to obsolete Recommendations.[5] Should the SRM TWG decide to follow the same approach, it could recommend that the Governing Body limit itself to taking note of the juridical replacement of all those Recommendations which had been expressly "superseded" or "revised and replaced" by subsequent instruments and instructing the Office to take appropriate action to ensure that the text of the juridically replaced Recommendations was removed from all collections of standards.

4. With specific reference to the juridical replacement of the Work in Fishing Recommendation, 2005 (No. 196), by the Work in Fishing Recommendation, 2007 (No. 199), even though reference to the latter instrument "superseding" the former was only made in

[4] Report VII(1), International Labour Conference, 90th Session, Geneva, 2002, para. 5.

[5] GB.274/LILS/WP/PRS/3, para. 3. This approach followed the conclusions of another study carried out in 1974, which noted that "Recommendations could at any time be abrogated by Conference action, either as part of the adoption of up-to-date standards or by a decision directed solely to such abrogation" and mentioned the possibility of deleting from the body of ILO texts the Recommendations that have been legally replaced; GB.194/PFA/12/5. A footnote indicated that some Recommendations already provide that they supersede earlier standards but no steps have been taken for the formal deletion of these standards from the body of ILO texts.

the Preamble of Recommendation No. 199 and not in the body of the text, it was explained that this was atypical, linked to the particular circumstances in which Recommendation No. 196 was adopted (supplementing a Convention which eventually was not adopted for lack of quorum) but also the fact that Recommendation No. 199 reproduced textually the provisions of Recommendation No. 196 with the exception of the Preamble which was revised to reflect the fact that the new Recommendation superseded the instrument adopted in 2005.[6]

5. As regards the possibility of a self-governing non-metropolitan territory to be bound by a Convention, even where the member State responsible for its international relations had not ratified it, the Legal Adviser noted that such possibility existed and referred to the examples of Italy which had accepted on behalf of the Trust Territory of Somaliland obligations arising out of Conventions Nos. 17, 65, 84 and 85 and the Netherlands which had declared Convention No. 172 applicable to the Netherlands Antilles without either country being itself bound by the respective Conventions. Further support for this view was found in an Office interpretation that "the possibility of making a declaration under article 35(4) was not dependent on the Convention concerned being ratified by the Member responsible for the international relations of the non-metropolitan territory concerned [and] action under article 35(4) might be taken irrespective of ratification."[7] In so far as denunciation of Conventions was concerned, the Office practice was that article 35(3) of the ILO Constitution did not necessarily involve the automatic cessation of the obligations under a declaration of application to a non-self-governing non-metropolitan territory and that the government could, if it thought fit, maintain in force the obligations accepted in respect to such a territory. When a denunciation involved a self-governing non-metropolitan territory, the Office approach was that as paragraphs 4–7 of article 35 of the ILO Constitution provided for obligations to be accepted in agreement with the government of the territory, denunciation should also be in agreement with the concerned territory, and therefore obligations did not lapse automatically if the metropolitan power denounced the Convention.

6. Responding to points raised around the "shelving" of instruments, the Legal Adviser clarified "shelving" as well as "dormancy" were basically "administrative" arrangements, which were recommended by the Cartier and Ventejol Working Parties respectively and put in place by Governing Body decisions, in the absence of a constitutional provision enabling the Conference to abrogate obsolete Conventions. He confirmed that "shelving" did not close obsolete Conventions to further ratification as this could only be effected in accordance with the terms of a specific provision built-in to most ILO Conventions following the adoption of a revised instrument. Concretely, "shelving" implied that the ratification of the Conventions concerned was no longer encouraged and their publication in Office documents, studies and research papers would be modified. It also meant that detailed reports on the application of these Conventions would no longer be requested on a regular basis. However, the right to invoke provisions relating to representations and complaints under articles 24 and 26 of the Constitution remained intact as well as the right of employers' and workers' organizations to submit observations in accordance with the regular supervisory procedures. Finally, "shelving" had no impact on the status of the Conventions concerned in the legal systems of member States that had ratified them.[8]

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[6] Work in the fishing sector, Report IV(2B), International Labour Conference, 96th Session, Geneva, 2007, p. 65.

[7] Minutes of the 123rd Session of the Governing Body, Nov. 1953, Appendix V: "The ILO and non-metropolitan territories", para. 26, p. 106.

[8] GB.283/LILS/WP/PRS/1/2, para. 32, p. 14.

2. International Maritime Organization

(submitted by the Director of the Legal Affairs and External Relations Division of the International Maritime Organization)

(*a*) Supplemental legal advice regarding the introduction of mandatory safety standards for the carriage of more than 12 industrial personnel

Possibility of a "Mandatory instrument and/or provisions addressing safety standards for the carriage of more than 12 industrial personnel on board vessels engaged on international voyages"—Consideration of legal mechanisms for implementing an interim solution while developing a new chapter in the International Convention for the Safety of Life at Sea (SOLAS) and a Code for industrial personnel

IMO document MSC 97/6 provides legal advice by the Secretariat regarding the introduction of mandatory safety standards for the carriage of more than 12 industrial personnel.

Background

1. The Sub-Committee on Ship Design and Construction (SDC), at its third session, requested the Secretariat to provide legal advice to Maritime Safety Committee (MSC) 96 on the planned output on "Mandatory instrument and/or provisions addressing safety standards for the carriage of more than 12 industrial personnel on board vessels engaged on international voyages". That advice was contained in document MSC 96/7/3. After an in-depth discussion at MSC 96, the Committee, noting the complex nature of the legal issues, agreed that the matter should be further considered at MSC 97, and requested supplemental legal advice taking into account the views expressed in paragraphs 7.3, 7.7 and 7.8 of document MSC 96/25.

Discussion

2. At MSC 96, during a wide-ranging discussion on options available to progress work on standards for the carriage of more than 12 industrial personnel, taking into account several documents submitted on the topic, including the legal advice in document MSC 96/7/3, the Committee noted that there was little support for amending chapter I of the annex to the International Convention for the Safety of Life at Sea (SOLAS) to include a new definition for "industrial personnel". Consequently, the Committee decided to pursue development of a new chapter of SOLAS and a Code, solely for industrial personnel, relying on the "unless expressly provided otherwise" language of regulation I/2 to create a definition of "industrial personnel" within the new chapter. The Committee recognized that development, adoption and entry into force of a new chapter in SOLAS would take some time, perhaps several years. Therefore, many delegations expressed the view that an interim solution should be explored (MSC 96/25, paragraphs 7.4 and 7.3.3).

3. The legal mechanism for implementing the interim solution was the subject of significant discussion within the Working Group on the Carriage of Industrial Personnel and in the Committee. The Committee considered three main options to accommodate an interim solution:

Option 1: Creating a definition of industrial personnel by means of an MSC resolution, specifically stating that industrial personnel are not passengers within the meaning of SOLAS regulation I/2(*e*) and identifying the applicable interim standards within this resolution.

Option 2: Classifying industrial personnel as "other persons employed or engaged in any capacity on board a ship on the business of that ship" in terms of SOLAS regulation I/2(*e*), by means of an MSC resolution identifying the interim standards.

Option 3: Creating a definition of industrial personnel and accompanying interim standards by means of an MSC resolution, to be used as a basis for granting exemptions under regulation I/4 or equivalents under regulation I/5.

4. The Committee recognized that all three options have legal and practical implications, necessitating the request for further legal analysis.

Analysis

5. *Option 1:* Creating a definition of industrial personnel by means of an MSC resolution, with the result that, for the purposes of the resolution, industrial personnel are not passengers within the meaning of SOLAS regulation I/2(*e*) could be accomplished, as noted by one delegation, by deleting paragraph 2.1 of annex 1 and the second clause of paragraph 2 of the annex to annex 1 of document MSC 96/WP.7 (Draft MSC Resolution and Recommendation for the carriage of more than 12 industrial personnel on board vessels engaged on international voyages). This proposal would result in the draft resolution, in relevant part, reading:

> "*Invites* Governments, until such time that a mandatory instrument for the carriage of industrial personnel enters into force, to apply the annexed Recommendation when regulating ships, regardless of size, carrying more than 12 industrial personnel."

and the Recommendation, in relevant part, reading:

> "2 Taking into account the view of the Committee that industrial personnel should not be considered or treated as passengers under regulation I/2(*e*)."

6. The legal effect of this proposal would be that industrial personnel would not be treated as either passengers or crew within the meaning of SOLAS. However, as described in document MSC 96/7/3, paragraph 9, SOLAS only has three types of persons, *i.e.* passengers, crew and infants. Thus, option 1 would have the effect of taking industrial personnel outside the scope of the three categories in SOLAS without amending the Convention itself, raising issues as to the legal validity of such action and to the legal status of industrial personnel so categorized. In effect, option 1 would untether the interim solution from SOLAS in a legal sense, a factor for consideration by the Committee.

7. However, there is precedent for such an action. As described in document MSC 96/7/3, paragraphs 16 and 17, the SPS Code uses a similar device with respect to the definition and application of standards for "special personnel," but also raises similar legal issues.

8. *Option 2:* Interpreting regulation I/2(*e*)(i) of SOLAS to mean that industrial personnel are "other persons employed or engaged in any capacity on board a ship on the business of that ship" is legally possible, but does raise issues for the Committee to consider.

Article 31(1) of the Vienna Convention on the Law of Treaties (VCLT) states that "A treaty shall 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." The VCLT does allow taking into account, together with the context, "any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions" (article 31(3)(*a*). Thus, the Parties to SOLAS could decide to interpret regulation I/2(*e*)(i) in the manner envisioned by option 2.

9. In doing so, the Committee may wish to consider two factors. The first is whether industrial personnel are truly "employed or engaged in any capacity on board a ship on the business of that ship." The second, related, factor is that such an approach would create a legal anomaly, because "special personnel," defined in the SPS Code at paragraph 1.3.11, do not fall within the same exception in SOLAS regulation I/2, even though they arguably have more to do with the business of the ship than industrial personnel.[1]

10. *Option 3:* Regulations I/4 and I/5 allow for exemptions and equivalents for certain requirements of the Convention for individual ships. Chapters II-1 (Regulations 1–4 and 55), II-2 (Regulations 2–4 and 17), III (Regulation 2), IV (Regulation 3) and V (Regulation 3) also allow for further exemptions, equivalents and alternative design and arrangements for certain ships. In all cases, SOLAS requires that the Administration communicates to the Organization the particulars of any such exemption, equivalent or alternative design or arrangement. Such communications are routinely made to the Organization and can be found on IMODOCS at: https://docs.imo.org/Category.aspx?cid=183.

11. As was correctly pointed out by some delegations, not all exemptions and equivalents in regulations I/4 and I/5 are relevant or applicable to the issue of industrial personnel. For example, regulation I/4(*a*) allows for exemptions for a single international voyage, which may be impracticable in the case of the carriage of 12 or more industrial personnel.

12. Regulation I/4(*b*) allows for exempting any ship which "embodies features of a novel kind from any of the provisions of chapters II-1, II-2, III and IV […] the application of which might seriously impede research into the development of such features and their incorporation in ships engaged on international voyages", provided that any ship granted such exemption complies "with safety requirements which […] are adequate for the service for which the ship is intended and are such as to ensure the overall safety of the ship". Regulation I/V(*a*) states that, where SOLAS requires that a particular fitting, material, appliance or apparatus shall be fitted or carried in a ship, or that any particular provision shall be made, the Administration may allow any other fitting, material, apparatus or provision, if it is satisfied by trial thereof or otherwise, that such arrangements are at least as effective as those required in the Convention.

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[1] It appears that, in excluding SPS Personnel from the exception in regulation I/2(*e*), the Committee and the Assembly recognized that there is some limit to interpreting persons as "being on the business of the ship," otherwise, the interpretation would subsume the definition and defeat the purpose of the Convention. As an extreme example, persons (*i.e.* passengers) participating in a cruise voyage could be argued to be on the business of a cruise ship, but such an interpretation is not only circular reasoning, but would defeat one of the purposes of SOLAS, that is, to create safety rules for persons on board passenger vessels on international voyages. To take a decision on where the limit of the interpretation lies, is the remit of the Committee and the Parties.

13. There appears to be no legal impediment to the Committee and the Contracting States agreeing to a resolution stating that, if the interim recommendations are adhered to, the Administration can be satisfied that such requirements are at least as effective as those in the Convention, allowing for the issuance of an equivalency under regulation I/5. A more extenuated interpretation could allow the adherence to the interim measures to be viewed as research into the development of the new chapter of SOLAS and affiliated Code, justifying exemptions under regulation I/4(*b*). In either case, the requirement for an adequate or equivalent level of safety would prevent any such decision from defeating the purpose and context of SOLAS overall and would avoid abrogation of article 31 of the VCLT.

14. However, one delegation noted that interpreting and utilizing regulations I/4 and I/5 in this manner may differ from past practice and would need to be seen as an exception addressing the specific situation of the interim solution that shall not change the way the regulations are interpreted and implemented in other cases (MSC 96/25, annex 29). Furthermore, as regulations I/4 and I/5 apply to "a ship," not an entire class of vessels, exemptions and equivalents would need to be evaluated and issued on a ship-by-ship basis and the requirements to communicate such exemptions and equivalents to the Organization would remain. While legally permissible, this could entail practical challenges in implementation.

(*b*) Legal advice on the proposal, circulation, adoption, acceptance and entry into force of amendments to the to the Ballast Water Management Convention (BWM Convention)

Circulation, adoption, acceptance and entry into force of amendments to IMO instruments governed by the IMO instrument and the Vienna Convention on the Law of Treaties, 1969—Options and timelines for proposal, circulation, consideration, adoption, acceptance and entry into force of amendments—Option 1: Strict adherence to article 19 of the BWM Convention and the Vienna Convention—Option 2: Accelerated circulation of the amendment—Option 3: Provisional application

IMO document MEPCC 69/4/7 provides legal advice by the Secretariat.

Introduction

1. The Marine Environment Protection Committee (MEPC) 68 agreed in principle with the proposed draft amendments to regulation B-3 and noted different drafting alternatives for those amendments (MEPC 68/WP.8, annexes 3 and 4). However, the Committee agreed that further consideration of the amendments was needed before they could be approved. The Committee also requested the Secretariat to submit a document containing legal advice on the matter to its sixty-ninth session.

Legal framework for amendment of IMO instruments

2. The circulation, adoption, acceptance and entry into force of amendments to IMO instruments is primarily governed by two treaties; the IMO instrument itself, and the Vienna Convention on the Law of Treaties, 1969 (the Vienna Convention). Article 5

of the Vienna Convention indicates that its terms apply to any treaty adopted within an international organization after 1980 (the date of entry into force). Thus, with respect to the BWM Convention, the terms of the Vienna Convention should also be considered.

3. Article 19 of the BWM Convention governs amendment of the instrument. For an amendment to the annex to the Convention, such as the proposed amendments to regulation B-3, the process and timeline is as follows:

1. Any Party may propose an amendment. A proposed amendment is then circulated by the Secretary-General at least six months prior to its consideration by the Committee. The Parties, at the MEPC, then consider the amendment for adoption.

2. After adoption, the Secretary-General shall communicate the adopted amendment to the Parties for acceptance. In the case of an amendment to the annex, the amendment is considered accepted 12 months after the date of adoption, unless the Committee determines another date, or if more than one third of the Parties object to the amendment.

3. After acceptance, an amendment to the annex will enter into force six months after the date of acceptance, except for Parties that have specifically objected to it, or require explicit acceptance of the amendment.

4. The Vienna Convention affects the operation of article 19 of the BWM Convention in one important way. Article 2(1)(*g*) of the Vienna Convention defines a "Party" as "a State which has consented to be bound by the treaty and for which *the treaty is in force*" (emphasis added). Under the Vienna Convention, there are no "Parties" to a treaty until after it has entered into force. Prior to that time, there are only "Contracting States", defined in article 2.1(*f*) as "States which have consented to be bound by the treaty, whether or not the treaty has entered into force". Article 39 of the Vienna Convention states that a treaty may be amended by agreement between the Parties; therefore, it must be in force before it is amended. Because article 19 of the BWM Convention refers only to "Parties", the proposal, circulation, consideration, adoption and acceptance functions can only occur after the treaty has entered into force, otherwise, the terms of the Vienna Convention would be abrogated.

5. IMO and MEPC practice requires "approval" step in the amendment process. As the approval process is not contemplated either by the Vienna Convention, or by the BWM Convention, it is not bound by their strictures, and it can take place prior to the treaty entering into force. As described in the table annexed to this document, approval of initial amendments to some of IMO conventions has occurred a number of times since 1973; for instance in the case of the initial amendments to the International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78 (as highlighted in green in the annex to this document).

Options and timelines for proposal, circulation, consideration, adoption, acceptance and entry into force

Option 1: Strict adherence to article 19 of the BWM Convention and the Vienna Convention

6. Following the terms of article 19 of the BWM Convention leads to two possible timing scenarios for amendment of the Convention, as follows:

1. Option 1*a*, acceptance as stated in article 19:

Process Event	*Minimum time required*
Approval	None—can be accomplished before EIF
Proposal	Any time after EIF (1 day)
Circulation	6 months
Consideration and adoption	Next MEPC following completion of circulation—could be no additional time
Acceptance	12 months
Entry into force (EIF)	6 months
Minimum time required:	24 months and 1 day

Prior to consideration of the draft amendments proposed by Liberia in document MEPC 68/2/18, by the Ballast Water Review Group, and the request for the advice contained in this document, the Committee decided that article 19 would be followed in this manner.

2. Option 1*b*: Amended time for acceptance. Article 19.2.e.ii allows for the Committee to determine an alternate date for an amendment to be deemed accepted, thus the acceptance date could be earlier than the 12 months stated in the Convention. The time could not practically be zero, however, as some time is needed for the Secretariat to distribute the adopted amendments and for Parties to consider whether to object or require explicit acceptance for the amendment. In the view of the Secretariat, trimming more than six months off of the acceptance requirement would present practical and other difficulties, therefore the soonest an amendment to regulation B-3 could enter into force under this scenario would be 18 months from entry into force of the Convention.

Option 2: Accelerated circulation of the amendment

7. As was noted by some delegations at MEPC 68, Parties to IMO instruments have in the past instructed the Secretary-General to circulate amendments for consideration prior to the instrument itself entering into force. This has occurred, for example (as highlighted in yellow in the annex to this document), in the following cases: the initial amendments to MARPOL Annex IV which were circulated one month before Annex IV came

into force; the amendments to MARPOL Annex III which were circulated 10.5 months before Annex III entered into force; the amendments to MARPOL Annex VI which were circulated six months before the entry into force of Annex VI and the amendments to SOLAS Protocol 1988 which were circulated five months before the entry into force of SOLAS Protocol 1988. As described above, this practice does not comply with the Vienna Convention, and at MEPC 68, the Committee decided, prior to consideration of the amendments of regulation B-3 by the Ballast Water Review Group, not to use this method to accelerate entry into force. Also, as noted by some delegations at MEPC 68, this practice has only occurred at IMO for annexes to existing conventions, where the foundational convention itself (*i.e.* MARPOL 73/78) was in force, but the annex was not. IMO has never used this practice where the foundational convention was not yet in force.

8. If this option was decided on by the Committee, it could accelerate entry into force of the amendments by six months. If utilized in combination with an accelerated acceptance date as described in paragraph 6.2, up to one year could be trimmed from the normal 24-month period envisaged by article 19 of the BWM Convention.

Option 3: Provisional application

9. Article 25(1) of the Vienna Convention allows for a process whereby the negotiating States to a treaty or amendment to a treaty can agree to have it apply provisionally pending entry into force. A "negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty. In the case of the BWM Convention, the negotiating States would be those as listed in paragraph 3 of BWM/CONF/37.

10. Provisional application is not considered accelerated entry into force. Instead, it is an agreement by the negotiating States to apply the treaty or amendment as if it were in force until such time as actual entry into force occurs. Provisional application is normally communicated through a resolution. In the case of an amendment to regulation B-3 of the BWM Convention, if provisional application was decided, the amendment could apply provisionally as soon as it is adopted. However, the amendment would not actually enter into force until the time described in paragraph 6. Parties could still object to the amendment or require explicit acceptance under article 19. Further, article 25(2) of the Vienna Convention allows a negotiating State to terminate provisional application by notifying the other States subject to provisional application of its intention not to become a Party to the treaty.

11. Although provisional application has been used in many United Nations instruments in the past, it has been used rarely in IMO instruments, one example being the 1998 amendments to the INMARSAT Convention. A variant of provisional application has been employed for amendments to MARPOL 73/78, Annexes I and IV. If provisional application was used in this circumstance, the time from entry into force of the BWM Convention to the provisional application of amendments to regulation B-3 could be as little as six months, depending on the timing of the MEPC meeting following entry into force.

Treaty	Date of entry into force of original treaty/ protocol	Date of approval of first amend-ment	Date of circulation of first amend-ment	Adoption dates of first amendment	Date of entry into force of amendment(s) to the origi-nal treaty/ protocol	Resolution
Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances oth-er than Oil, 1973 (INTERVENTION PROT 1973)	30/03/1983	12/03/1990	17/04/1990	04/07/1991	24/07/1992	MEPC.49(31)
London Convention 1972—Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended—amendment re-lated to Settlement of disputes	30/08/1975	30/09/1977	02/02/1978	12/10/1978	Not yet in force	LDC.6(III)
London Convention 1972—annex—amendment relat-ed to Incineration at sea	30/08/1975	30/09/1977	02/02/1978	01/12/1978	11/03/1979	(LDC.5(III))
London Convention Protocol 1996	24/03/2006	-	28/04/2006	03/11/2006	10/02/2007	(LP1.(1))
MARPOL Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended	02/10/1983	01/05/1985	15/05/1985	05/12/1985	06/04/1987	MEPC.21(22)

Treaty	Date of entry into force of original treaty/ protocol	Date of approval of first amend-ment	Date of circulation of first amend-ment	Adoption dates of first amendment	Date of entry into force of amendment(s) to the origi-nal treaty/ protocol	Resolution
MARPOL ANNEX I	02/10/1983	06/04/1982 and 30/06/1982	16/01/1984	07/09/1984	07/01/1986	MEPC.14(20)
MARPOL ANNEX II	02/10/1983	01/05/1985	13/05/1985	05/12/1985	06/04/1987	MEPC.16(22)
MARPOL ANNEX III	01/07/1992	09/09/1988	23/08/1991	30/10/1993	28/02/1994	MEPC.58(33)
MARPOL Annex IV	27/09/2003	13/03/2000	08/08/2003	01/04/2004	01/08/2005	MEPC.115(51)
MARPOL Annex V	31/12/1988	10/07/1986 and 09/09/1988	13/02/1989	17/10/1989	18/02/1991	MEPC.36(28)
MARPOL Annex VI—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	19/05/2005	31/03/2000 and 18/07/2003	15/11/2004	22/07/2005	22/11/2006 and 22/11/2007	MEPC.132(53)
CLC PROT 1992—Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969	30/05/1996	N/A	10/04/2000	18/10/2000	01/11/2003	LEG.1(82)

Treaty	Date of entry into force of original treaty/ protocol	Date of approval of first amend-ment	Date of circulation of first amend-ment	Adoption dates of first amendment	Date of entry into force of amendment(s) to the origi-nal treaty/ protocol	Resolution
FUND PROT 1992—Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971	30/05/1996	N/A	10/04/2000	18/10/2000	01/11/2003	LEG.2(82)
LLMC PROT 1996—Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976	13/05/2004	N/A	06/12/2010	19/04/2012	08/06/2015	LEG.5(99)
COLREG 1972—International Regulations for Preventing Collisions at Sea, 1960	15/07/1977	05/12/1980	02/02/1981	19/11/1981	01/06/1983	A.464(XII)
CSC 1972—International Convention for Safe Containers (CSC), 1972, as amended	06/09/1977	BC XXII in January 1981 recom-mended amend-ments for adoption by MSC 44 in April 1981	No record of circula-tion found	02/04/1981	01/12/1981	
LL 1966—International Convention on Load Lines, 1966	21/07/1968	February 1970	No record of circula-tion found	12/10/1971	Not yet in force	A.231(VII)

Treaty	Date of entry into force of original treaty/ protocol	Date of approval of first amend-ment	Date of circulation of first amend-ment	Adoption dates of first amendment	Date of entry into force of amendment(s) to the origi-nal treaty/ protocol	Resolution
LL PROT 1988—Protocol of 1988 relating to the International Convention on Load Lines, 1966	03/02/2000	02/12/2002	02/12/2002	05/06/2003	01/01/2005	MSC.143(77)
SAR 1979—International Convention on Maritime Search and Rescue, 1979	22/06/1985	06/06/1997	September 1997	18/05/1998	01/01/2000	MSC.70(69)
SOLAS 1974—International Convention for the Safety of Life at Sea, 1974, as amended	25/05/1980	02/04/1981	08/05/1981	20/11/1981	01/09/1984	MSC.1(XLV)
SOLAS PROT 1978—Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974	01/05/1981	02/04/1981	08/05/1981	20/11/1981	01/09/1984	MSC.2(XLV)
SOLAS PROT 1988—Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974	03/02/2000	28/05/1999	31/08/1999	26/05/2000	01/01/2002	MSC.92(72)
STCW 1978—International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended	28/04/1984	28/05/1990	31/07/1990	22/05/1991	01/12/1992	MSC.21(59)

Treaty	Date of entry into force of original treaty/ protocol	Date of approval of first amend-ment	Date of circulation of first amend-ment	Adoption dates of first amendment	Date of entry into force of amendment(s) to the origi-nal treaty/ protocol	Resolution
TONNAGE 1969—International Convention on Tonnage Measurement of Ships, 1969	18/07/1982	30/11/2012	11/04/2013	04/12/2013	28/02/2017	A.1084(28)
FAL 1965—Convention on Facilitation of International Maritime Traffic, 1965, as amended	05/03/1967	No record found	03/09/1973	19/11/1973	02/06/1984	
FAL 1965—annex	05/03/1967	No record found	28/11/1969	11/02/1971	12/08/1971	
SALVAGE 1989—International Convention on Salvage, 1989	14/07/1996	N/A	N/A	N/A	N/A	
IMSO CONVENTION 1976—Convention on the International Mobile Satellite Organization	16/07/1979	No record found	No record found	16/10/1985	13/10/1989	
IMSO AMEND-98—1998 amendments to Inmarsat Convention	31/07/2001	No record found	No record found	29/09/2006	Provisional applica-tion from 07/03/2007 pending their formal entry into force de-cided at 19th extraordinary Assembly of IMSO INMARSAT.6/ Circ.1 of 3 July 2007	

3. United Nations Industrial Development Organization

(submitted by the Legal Adviser and Director of the Office of Legal Affairs of the United Nations Industrial Development Organization)

(*a*) Internal email message to the Officer-in-Charge of the UNIDO Policymaking Organs concerning the legal status of [Territory/State] at UNIDO

Rights, if any, of autonomous territories of a Member State of UNIDO—Whether a territory's authorities or NGOs can obtain observer status at UNIDO and use that status for the purposes of representation

I refer to your email dated 29 April 2016 concerning the recent visit of a [State] delegation to UNIDO.

In reverse order, the questions you have asked, and my brief replies, are set out below.

1. What are the rights, if any, of autonomous territories of a Member State?

— Under the Constitution of UNIDO, the rights of membership are accorded to Member States, as represented by their national governments. Regardless of domestic status or degree of autonomy, regional governments and autonomous territories enjoy no rights under the Constitution of UNIDO.

2. Could the [Territory] authorities or NGOs obtain observer status at UNIDO and use that status for the purposes of representation?

— This Office is not aware of any precedent whereby the General Conference or the IDB [Industrial Development Board] has accorded a regional government or autonomous territory of a Member State any status at UNIDO.

— National or international NGOs based in [Territory] could secure the right to participate in the policymaking organs of UNIDO provided the IDB accords them consultative status. Consultative status is granted, upon application by each NGO, in accordance with the procedures and criteria set out in the *Guidelines for the relationship of UNIDO with intergovernmental, governmental, non-governmental and other organizations* (GC.1/Dec.41).

— The rights of participation of NGOs enjoying consultative status with UNIDO include the right to intervene, with the permission of the President, in debates on matters of particular concern to them (see, *e.g.*, rule 32 of the rules of procedure of the GC [General Conference]). It is conceivable that this right could be used for "representation" purposes.

25 May 2017

(*b*) Interoffice memorandum to the Officer-in-Charge of the UNIDO Department of Operational Support Services concerning the applicability to members of permanent missions of policies and rules governing common services on United Nations premises

United Nations premises-wide policies and rules apply to members of permanent missions—No duty to consult with permanent missions regarding United Nations premises-wide policies prior to agreeing to a new premises-wide policy or rule.

1. I refer to your emails of 18 and 26 May 2016, requesting legal advice in connection with a letter from the [State] ambassador to the Deputy Director-General of [United Nations Office]. The letter, dated 12 May 2016, objects to a message from [United Nations Office] informing permanent missions of changes made by the Committee on Common Services (CCS) to the smoking policy at the [UN Headquarters]. In his letter, the ambassador expresses the view that,

> "… while the decisions of this Committee fall to the staff of such [UN Headquarters-based] organizations, the measures … will only apply to the staff of the Secretariat. Decisions involving actions or affecting the Member States and their permanent missions must be taken in an intergovernmental framework and having their consent as well.
>
> Consequently, we understand that the announced measures, with a restrictive approach, will only apply to the staff of international organizations based in [City]."

2. In his reply dated 25 May 2016, the Deputy Director-General of [United Nations Office] draws attention to General Assembly resolution 63/8 of 3 November 2008 on "Smoke-free United Nations premises" and explains that the decision of the CCS to restrict smoking to three designated shelters was an additional effort in providing a healthy and unpolluted environment to delegates, employees and visitors in the [UN Headquarters].

3. The questions you have referred to this Office in connection with the ambassador's letter are as follows:

(i) whether and how far [UN Headquarters]-wide policies and rules apply to members of permanent missions; and

(ii) whether and how far the organizations in the [UN Headquarters] are expected or obliged to consult with permanent missions about [UN Headquarters]-wide policies and changes thereto.

4. In summary, my conclusions are:

(i) that [UN Headquarters]-wide policies and rules are applicable, insofar as they are relevant, to members of permanent missions who use the common services and facilities at the [UN Headquarters]; and

(ii) that the Director General is not obliged to consult with permanent missions prior to the promulgation of [UN Headquarters]-wide policies and rules but that it would be prudent for him to do so where such policies and rules affect their interests.

(i) *Do [UN Headquarters]-wide policies and rules apply to members of permanent missions?*

5. For the purposes of this opinion, the expression "[UN Headquarters]-wide policies and rules" refers to administrative issuances and announcements of the [UN Headquarters]-based organizations governing the provision of common services and related matters at the [UN Headquarters].[1] Examples of [UN Headquarters]-wide policies and rules include the issuances or announcements regulating safety and security, medical services, parking and smoking.

6. Administrative authority over the [UN Headquarters] and over common services at the [UN Headquarters] lies with the executive heads of the [UN Headquarters]-based organizations. No uniform mechanism exists for issuing [UN Headquarters]-wide policies and rules. While generally based on decisions of the Committee on Common Services, they may be found in administrative issuances or announcements promulgated by:

— the executive heads jointly (*e.g.* security rules);

— the organization responsible for the service (*e.g.* parking rules); and/or

— each organization separately (*e.g.* smoking policy).

7. [UN Headquarters]-wide policies and rules do not require the approval of the policymaking organs of UNIDO. The authority of the Director General of UNIDO in respect of [UN Headquarters] matters derives from, and is exercised in accordance with, the provisions of a number of instruments:

— The Constitution of UNIDO, which stipulates in article 13(3) that the Director General is the chief administrative officer of the Organization and has the overall responsibility and authority to direct the work of the Organization, subject to the general or specific directives of the General Conference or the Industrial Development Board.

— The Relationship Agreement of 1985 between the United Nations and UNIDO, article 14 of which regulates administrative cooperation and consultations between the parties, including with regard to common facilities or services.

— The Memoranda of Understanding of 1977 and 1998 between the [UN Headquarters]-based organizations concerning the allocation of common services at the [UN Headquarters], which allocates catering and buildings management to UNIDO. The MOU of 1977 provides that policy direction and overall management in regard to the planning and implementation of the common services rests with the CCS, while the MOU of 1998 confirms that the CCS functions on the basis that each common service is allocated to one of the organizations and is operated under the authority of the respective executive head who bears final responsibility for that service.

— The Headquarters Agreement of UNIDO of 1995, section 16(*a*) of which states that the Organization has the power to make regulations, operative within the headquarters seat, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. Section 16(*a*) further provides that no law of

[1] The reference to "administrative issuances" in this definition excludes treaty-based rules such as those Commissary rules contained in the supplemental agreement of 1972 between the [United Nations Organization] and the [Host Country] on the establishment of an Agency Commissary.

> the [Host Country] which is inconsistent with such a regulation shall, to the extent of such inconsistency, be applicable within the headquarters seat.

8. Each [UN Headquarters]-based organization has a framework of internal rules and agreements similar to that of UNIDO. As far as UNIDO is concerned, the relevant instruments imply not only that the day-today administration of the common services and other facilities at the [UN Headquarters] is the prerogative of the executive heads. They also imply that [UN Headquarters]-wide policies and rules may be made applicable to and binding on all persons who use the services and facilities in question, irrespective of their personal status. In principle, therefore, [UN Headquarters]-wide policies and rules may apply to staff members, consultants, contractors and delegates.

9. The headquarters seat of UNIDO and the other [UN Headquarters]-based organizations could not be effectively administered if an entire category of users were exempt from the application of [UN Headquarters]-wide policies and rules. If members of permanent missions did not have to follow [UN Headquarters]-wide policies and rules unless they had specifically consented to them, there would be no clarity on what rules, if any, would govern their use of the services and facilities in question. The results would be unfortunate. For example, if the garage rules did not apply to members of permanent missions, there would be nothing to prevent them from parking in bays reserved for others, such as the disabled, or from ignoring the requirement that cars be insured for third party liability. And if the ban on smoking did not apply to members of permanent missions, they would be free to smoke in non-designated areas such as the cafeteria, the conference rooms and the rotunda, while everyone else would not.

10. In the light of the above, it must be concluded that [UN Headquarters]-wide policies and rules are also applicable, insofar as they are relevant, to members of permanent missions who use the common services and facilities at the [UN Headquarters].

(ii) *Is there a duty to consult with permanent missions regarding [UN Headquarters]-wide policies?*

11. This Office can identify no provision that expressly or implicitly requires the Director General to consult with permanent missions to UNIDO prior to, or as a condition for, the issuance of a [UN Headquarters]-wide policy or rule.

12. On the other hand, the Terms of Reference of the CCS state that the committee will give "[j]oint briefings, as appropriate, to Member States". An obvious forum for such briefings would be the Multilateral Diplomatic Committee, the full name of which is *Multilateral Diplomatic Committee for Relations with the International Organizations at [City] and the Host Country*.[2] As the chair of the MDC explained in the committee's annual report for 2015, which was tabled at the sixteenth session of the General Conference,

> "2. The MDC addresses matters that are relevant to all Member States and all [City]-based organizations ([…]). These are operating with a collaborative approach, as indicated by the establishment in 1977 of the Committee on Common Services and its Advisory Committees.

[2] *See* GC.14/Res 7, dated 2 December 2011.

3. In light of the above, in 2015 the MDC promoted the participation in its meetings of representatives of all [City-based organizations]. The direct exchange of information between them and Member States is extremely important. *It can serve as a valuable source of input for the decision-making processes of all organizations*, and also be of value to the Host Country."[3]

13. The annual report of the MDC for 2015 goes on to conclude that there was a "[n]eed to consult with Member States on important matters and decisions involving or affecting Permanent Missions and the diplomatic community" (paragraph 7(*f*)).

14. There is accordingly an expectation on the part of the MDC that member states will be consulted on important [UN Headquarters]-wide policies or rules that involve permanent missions or affect their interests. This expectation does not, however, establish an obligation on the part of the executive heads of the [UN Headquarters]-based organizations to conduct such consultations prior to agreeing to a new [UN Headquarters]-wide policy or rule. Nevertheless, given that the authority of the Director General is subject to the general or specific directives of the General Conference or the IDB, it may be prudent for the Secretariat to brief the MDC on important new [UN Headquarters]-wide policies or rules that are likely to involve or affect the interests of permanent missions. At any rate, permanent missions that object to a [UN Headquarters]-wide policy or rule have the right to raise their objections with the Secretariat or in the policymaking organs of UNIDO.

30 June 2016

(*c*) Letter to the Chief of the Treaty Section of the United Nations concerning UNIDO's objection to the reservations by the [State] to the Convention on Privileges and Immunities of the Specialized Agencies of 1947

Depository practice of the United Nations Secretary-General regarding the Convention on Privileges and Immunities of the Specialized Agencies of 1947—Objection of UNIDO to the reservations by a State to the Convention on Privileges and Immunities of the Specialized Agencies of 1947

I refer to depositary notification C.N.428.2016.TREATIES-III.2 of [date] announcing the receipt by the Secretary-General of the United Nations of the instrument of accession, with reservations, of the Government of the [State] to the Convention on the Privileges and Immunities of the Specialized Agencies of 1947. I also refer to your letter of 13 June 2016 to the Director General of the United Nations Industrial Development Organization, in which you advised that, consistent with depositary practice, the deposit of [State]'s instrument of accession requires the approval of the specialized agencies concerned.

On behalf of the Director General, I wish to inform you that the United Nations Industrial Development Organization objects to the reservations by the Government of the [State] to section 19 (*b*) and section 20 of the Convention on the grounds that the reservations, as currently formulated, would impinge on the independent exercise by UNIDO of its functions in the territory of [State] and are incompatible with the object and purpose of the Convention.

[3] Document GC.16/CRP.6, dated 25 November 2015, paras. 2–3 (emphasis added).

It would be appreciated if, in accordance with established practice, the position of the United Nations Industrial Development Organization could be communicated to the Government of the [State] with a view to finding an acceptable solution.

4 July 2016

(*d*) Internal email message to the Secretary of the UNIDO Staff Pension Committee (SPC) concerning disability pension case of an unnamed staff member

Determination of incapacity within the meaning of article 33(*a*) of the United Nations Joint Staff Pension Fund (UNJSPF) Regulations by the SPC "in each case"—Decisions of the SPC (or its secretary) are reviewable by the SPC and, thereafter, the Standing Committee, acting on behalf of the Board of the Fund, and, ultimately, the United Nations Appeals Tribunal

Reference is made to your email of 30 August 2016 addressed to the Legal Adviser, which requested advice concerning the disability pension case of an unnamed staff member. In particular, you ask "*under which rule could/should HRM possibly replace the SPC's consideration of the case as required by UNJSPF [United Nations Joint Staff Pension Fund] Administrative Rule H.4 (i.e. to consider whether the individual should receive a disability benefit)?*" You state that this is a matter for the SPC, rather than HRM and the JAB [Joint Appeals Board], and request us to confirm whether HRM's [Human Resources Management] view is correct.

In so far as the determination of incapacity within the meaning of article 33(*a*) of the Fund's Regulations is concerned, we are not aware of other applicable rules in UNIDO. The determination of incapacity for the purpose of disability benefits under article 33(*a*) and (*b*) of the Fund's Regulations shall be made "in each case" by the SPC of the organization by which the participant is employed. Cf. Administrative Rule H.1(*a*). The employer organization has the obligation to request such a determination from the SPC whenever there is reason to believe that the participant may be incapacitated, or if she is placed on LWOP [leave without pay] or her appointment is terminated for reasons of health. Cf. Administrative Rule H.3. If the employer organization has not acted in accordance with rule H.3, the SPC shall make the determination under article 33(*a*) at the request of the participant. Cf. Administrative Rule H.4.

Decisions of the SPC (or its secretary) are reviewable by the SPC and, thereafter, the Standing Committee, acting on behalf of the Board of the Fund, and, ultimately, the UNAT [United Nations Appeals Tribunal], in accordance with section K of the Administrative Rules of the Fund. Appeals against administrative decisions normally lie before the Joint Appeals Board (JAB) under chapter XII of the Staff Rules and, ultimately, the ILO Administrative Tribunal (ILOAT). Cf. Staff Regulation 12.2(*a*). Claims from staff members alleging the non-observance of the Regulations and Rules of the United Nations Joint Staff Pension Fund, however, are appealable to the UN Appeals Tribunal (UNAT), not the ILOAT. Cf. Staff Regulation 12.2(*b*).

Although participation in the Fund in accordance with the Regulations and Rules of the UNJSPF is, indeed, a term and condition of a staff member's appointment (unless excluded by the letter of appointment), cf. Staff Regulation 8.1; Staff Rule 108.01, an appeal

against the SPC's determination of incapacity for the purpose of disability benefits under article 33(*a*) and (*b*) of the Fund's Regulations is *not* appealable to the JAB pursuant to the principle of *lex specialis derogat generali*.

Furthermore, it is the SPC and not the Director General who determines the question of incapacity within the meaning of article 33(*a*) of the Fund's Regulations. An appeal to the JAB would be pointless in so far as the merits is concerned, because the JAB only makes recommendations to the Director General, and the Director General does not have the authority to make the necessary administrative decision regarding disability.

What if a disability claim under article 33(*a*) is, for whatever reason, not forwarded to the SPC or the SPC Secretariat, thus precluding the SPC from making a determination under Administrative Rule H.1(*a*)? In other words, who is competent to decide the issue of whether the employer organization has not acted in accordance with rule H.3? Since the SPC Secretariat is aware of the claim in the present case, the question is academic. In any event, it is for the SPC alone to determine the issue, because the determination of incapacity for the purpose of disability benefits shall be made "in each case" by the SPC.

7 September 2016

(*e*) Internal email message to the UNIDO Senior Human Resource Officer concerning possible retroactive application of the unified salary scale

Implementation of the unified salary scale pursuant to GA resolution 70/244—Obligations arising for UNIDO based on membership in the United Nations common system—Valid justifications for UNIDO to depart from General Assembly decisions—General principles of law underpinning the United Nations common system

This is with reference to your email to the Legal Adviser, dated 5 September 2016, concerning a possible change in the effective date of the unified salary scale for staff in the Professional and higher categories.

The unified salary scale is due to take effect on 1 January 2017 pursuant to GA resolution 70/244. You indicate that two options are being considered because of technical difficulties at the United Nations. The options are to postpone the effective date of 1 January 2017 or, alternatively, to postpone introduction of the unified salary scale but to apply it retroactively from 1 January 2017. You also indicate that [UNIDO Department A], [UNIDO Department B] and [UNIDO Department C] have concluded that the retroactive option would be close to impossible for UNIDO to implement. Consequently, if the General Assembly decides to apply the unified salary scale retroactively from 1 January 2017, UNIDO would not follow the retroactive element of the decision. The question you raise is whether such an approach would be acceptable and in line with the legal obligations of UNIDO.

Generally speaking, membership of the common system means that UNIDO has a legal duty to implement decisions of the General Assembly on matters falling within its competence under the Statute of the ICSC [International Civil Service Commission]. As is well known, such matters include the salary scales of staff in the Professional and higher categories. With the adoption of GA resolution 70/244, UNIDO came under an obligation to implement the unified salary scale as of 1 January 2017.

On the other hand, if the General Assembly adopts a new decision on the unified salary scale that adversely modifies GA resolution 70/244, it appears that the Organization would be able to provide a valid justification for departing from the new decision and for implementing it only to the extent that it is reasonably possible to do so. The Organization's obligations in terms of the Statute of the ICSC do not exist in isolation and are exercised in the light of general principles of law, which underpin the workings of the common system. General principles that are likely to aid UNIDO in the present case include the principles of reasonable reliance (*i.e.* UNIDO reasonably relied on the effective dates set out in GA resolution 70/244 and made its preparations accordingly) and impracticability of performance (*i.e.* it would be excessive and unreasonably difficult for UNIDO to change implementing modalities at this late stage in order to implement the unified salary scale retroactively).

The issue is still somewhat speculative as we do not know what the General Assembly will decide. UNIDO should, however, minimize any deviation from the General Assembly's new decision. One possibility may be to give effect to the unified salary scale on 1 January 2017, without deferring its implementation. From a legal viewpoint, the result would be virtually identical to deferred implementation coupled with retroactive effect as of 1 January 2017.

13 September 2016

(*f*) Email message to the Legal Officer of the [UN Organization] concerning the [Host Country] tax obligations for consultants

UNIDO's Independent Service Agreements extend functional privileges and immunities to consultants—Expert on mission status of consultants derived from Section 42 of the Headquarters Agreement of UNIDO—Consultants receive tax exemptions on their official salaries and emoluments based on their status as experts on mission

I refer to your email of 25 August 2016 to the [city-based United Nations organizations] legal advisers, asking for information on our experience with regard to the issue of exemption from taxation of consultants. The practice of UNIDO, which seems to differ from that of the [UN Organization], may be summarized as follows:

— UNIDO issues its consultants with Independent Service Agreements [ISA], which stipulate that the subscriber may, where relevant, benefit from functional privileges and immunities under international law. In the case of international consultants, the ISA provides that a subscriber who undertakes international travel on behalf of UNIDO shall be given the status of expert on mission under the terms of Annex XVII of the Convention on the Privileges and Immunities of the Specialized Agencies.

— In [Host Country], consultants engaged under an ISA automatically have the status of experts on mission for UNIDO. This status derives from section 42 of the Headquarters Agreement of UNIDO, which defines the term 'experts' to include experts *consulting at its request in any way* with the Organization. Section 43 of the Headquarters Agreement provides that such experts shall be exempt from taxation on their official salaries and emoluments.

— In view of the above provisions, UNIDO does not specifically designate individual consultants as experts on mission in [Host Country]. The Organization is nevertheless obliged to provide the Host Government with a list of experts and to update the list from time to time.

— If a consultant would otherwise have no right to reside in [Host Country] (*e.g.* as an EU [European Union] national), UNIDO will request a legitimation card for him or her. Legitimation cards may also be requested on other grounds if need be. However, consultants engaged under an ISA in [Host Country] are still experts on mission for UNIDO, even if they do not happen to have a legitimation card.

— Concrete problems relating to the taxation of consultants' fees have not been brought to the attention of the Office of Legal Affairs in recent years.

[…]

19 September 2016

(*g*) Internal email message to the UNIDO Human Resource Officer concerning import of medication under HQ Agreement with [Host Country]

The importation of medication is not expressly covered by the Headquarters Agreement of UNIDO—The expression "certain articles for personal use or consumption" in Section 37(*o*)(iii) of the Headquarters Agreement includes prescription and non-prescription medication—Limited quantities of medication may be imported subject to compliance with the laws of the Host Country.

I refer to your email of 27 September 2016 asking whether medication can be imported into [Host Country] under the Headquarters Agreement of UNIDO if members of the [Insurance company] scheme can purchase it cheaper elsewhere.

Before answering your question, I would like to comment on the statement by [Insurance company] that they have increased costs "because certain medicine is more expensive in [Host Country] than in other countries". Most beneficiaries live in [Host Country] and the premiums are calculated on the basis that most expenses are incurred in [Host Country] as well. The focus should not be on the comparative cost of medication, which has always been cheaper elsewhere, but on whether costs have increased due to other factors such as medical inflation, greater use or new treatments.

The importation of medication is not expressly covered by the Headquarters Agreement. In terms of section 37(*o*)(iii) of the agreement, officials of UNIDO have the right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports, "[l]imited quantities of certain articles for personal use or consumption and not for gift or sale". In my view, the expression "certain articles for personal use or consumption" includes prescription and non-prescription medication.

Officials who purchase limited quantities of medication abroad may therefore bring it with them whenever they return to [City] (this right exists under [Host Country] law anyway). In principle, officials who buy limited quantities of medication outside of [Host Country] can also have it shipped duty-free to [City], provided they complete any paperwork that is necessary for importation under the Headquarters Agreement. Section 37(*o*)(iii) only regulates importation and does not permit transactions that would otherwise be unlawful in [Host Country], such as online purchases of prescription or unlicensed medication. The import privileges in section 37(*o*) apply to beneficiaries who are currently officials (*i.e.* staff) and not to retirees or consultants.

Finally, if you wish to issue guidance to staff on this topic, please consult with the General Support Services Unit regarding the procedures for duty-free importation of goods into the EU. Any suggestion that staff are encouraged to import medication should be avoided as advice on medical matters can only be provided by a medical professional.

7 October 2016

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

A. International Court of Justice[1]

The International Court of Justice is the principal judicial organ of the United Nations. It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

1. Judgments

(*a*) *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *India)*, Judgment, 5 October 2016.

(*b*) *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *Pakistan)*, Judgment, 5 October 2016.

(*c*) *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom)*, Judgment, 5 October 2016.

(*d*) *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, Judgment, 17 March 2016.

(*e*) *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua* v. *Colombia)*, Judgment, 17 March 2016.

2. Advisory Opinions

No advisory opinions were delivered by the International Court of Justice in 2016.

[1] The texts of the judgments, advisory opinions and orders are published in the ICJ Reports. Summaries of 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, https://legal.un.org/icjsummaries/. For more information about the Court's activities, see Report of the International Court of Justice, *Official Records of the General Assembly, Seventy-first Session, Supplement No. 4* (A/71/4) and *Seventieth-second Session, Supplement No. 4* (A/72/4), for the periods of 1 August 2015 to 31 July 2016 and 1 August 2016 to 31 July 2017, respectively.

3. Pending cases and proceedings as at 31 December 2016

(*a*) *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America)* (2016–).

(*b*) *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France)* (2016–).

(*c*) *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia)* (2016–).

(*d*) *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya)* (2014–).

(*e*) *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)* (2014–).

(*f*) *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)* (2013–).

(*g*) *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua* v. *Colombia)* (2013–).

(*h*) *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile)* (2013–).

(*i*) *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* (2010–).

(*j*) *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (1999–).

(*k*) *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (1993–).

B. International Tribunal for the Law of the Sea[2]

The International Tribunal for the Law of the Sea is an independent permanent tribunal established by the United Nations Convention on the Law of the Sea, 1982.[3] The Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea,[4] signed by the Secretary-General of the United Nations and the President of the Tribunal on 18 December 1997, establishes a mechanism for cooperation between the two institutions.

1. Judgments and Orders

Case No. 25—The M/V "Norstar" Case (Panama v. *Italy)*, Judgment, 4 November 2016.

2. Pending cases and proceedings as at 31 December 2016

(*a*) *Case No. 25—The M/V "Norstar" Case (Panama* v. *Italy)* (2015–).

[2] For more information about the Tribunal's activities, including relating to orders and judgments rendered in 2016, see the Annual report of the International Tribunal for the Law of the Sea for 2016 (SPLOS/304) and the Tribunal's website at http://www.itlos.org.

[3] United Nations, *Treaty Series*, vol. 1833, p. 3.

[4] *Ibid.*, vol. 2000, p. 468.

(*b*) *Case No. 23—Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)* (2014–).

C. International Criminal Court[5]

The International Criminal Court is an independent permanent court established by the Rome Statute of the International Criminal Court, 1998.[6] The Relationship Agreement between the United Nations and the International Criminal Court, signed by the Secretary-General of the United Nations and the President of the Court on 4 October 2004, outlines the relationship between the two institutions.[7]

In 2016, the following situations were under investigation by the Office of the Prosecutor: Uganda,[8] Democratic Republic of the Congo,[9] Central African Republic,[10] Darfur (the Sudan),[11] Kenya,[12] Libya,[13] Côte d'Ivoire,[14] Mali,[15] Central African Republic II,[16] and Georgia.[17]

Additionally, in 2016 the Office of the Prosecutor opened preliminary examinations of the situation in Burundi since April 2015 and the situation in Gabon since May 2016, respectively. The Office of the Prosecutor continued its preliminary examinations in Afghanistan, Colombia, Guinea, Iraq, Nigeria, the State of Palestine and Ukraine.

On 16 July 2015, following a request for review presented by the Government of the Union of the Comoros, Pre-Trial Chamber I requested the Prosecutor to reconsider her decision, dated 6 November 2014, to close the preliminary examination regarding the situation on Registered Vessels of the Comoros, Greece and Cambodia, due to the lack of a

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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 2015 to 31 July 2016 (A/71/342) and the period 1 August 2016 to 31 July 2017 (A/72/349), as well as the Court's website at http://www.icc-cpi.int.

[6] United Nations, *Treaty Series*, vol. 2187, p. 3.

[7] *Ibid.*, vol. 2283, p. 195.

[8] The situation was referred to the Court by Uganda in January 2004.

[9] The situation was referred to the Court by the Democratic Republic of the Congo in April 2004.

[10] The situation was referred to the Court by the Central African Republic in December 2004. The referral pertains to crimes within the jurisdiction of the Court committed anywhere on the territory of the Central African Republic since 1 July 2002.

[11] On 31 March 2005, the Security Council referred the situation in Darfur, the Sudan, to the Prosecutor of the Court by Security Council resolution 1593 (2005), adopted on 31 March 2005.

[12] On 31 March 2010, Pre-Trial Chamber II granted the Prosecutor's request to open an investigation *proprio motu* into the situation in Kenya.

[13] On 26 February 2011, the Security Council referred the situation in Libya to the Prosecutor of the Court by Security Council resolution 1970 (2011), adopted on 26 February 2011.

[14] On 3 October 2011, Pre-Trial Chamber III granted the Prosecutor's request to open an investigation *proprio motu* into the situation in Côte d'Ivoire.

[15] The situation was referred to the Court by Mali in July 2012.

[16] The situation was referred to the Court by the Central African Republic in May 2014. The referral pertains to crimes allegedly committed on the Central African Republic territory since 1 August 2012.

[17] On 27 January 2016, Pre-Trial Chamber I granted the Prosecutor's request for authorisation to open an investigation *proprio motu* into the situation in Georgia.

reasonable basis to proceed with an investigation.[18] On 6 November 2015, the Appeals Chamber of the International Criminal Court (ICC) decided by majority to dismiss, *in limine* and without discussing its merits, the Prosecutor's appeal against the decision of Pre-Trial Chamber I requesting the Prosecutor to reconsider the decision.[19] Consequently, the Prosecutor was required to review its decision as soon as possible pursuant to rule 108(2) of the Rules of Procedure and Evidence of the ICC. This reconsideration was still ongoing at the end of 2016.

1. Situations and cases before the Court as at 31 December 2016

(*a*) Situation in Uganda

Pending cases and proceedings

(*a*) *The Prosecutor* v. *Joseph Kony and Vincent Otti*, Case No. ICC-02/04-01/05.

(*b*) *The Prosecutor* v. *Dominic Ongwen*, Case No. ICC-02/04-01/15.

(*b*) Situation in the Democratic Republic of the Congo

Pending cases and proceedings

(*a*) *The Prosecutor* v. *Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06.

(*b*) *The Prosecutor* v. *Bosco Ntaganda*, Case No. ICC-01/04-02/06.

(*c*) *The Prosecutor* v. *Germain Katanga*, Case No. ICC-01/04-01/07.

(*d*) *The Prosecutor* v. *Sylvestre Mudacumura*, Case No. ICC-01/04-01/12.

(*c*) Situation in Darfur, the Sudan

Pending cases and proceedings

(*a*) *The Prosecutor* v. *Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Case No. ICC-02/05-01/07.

(*b*) *The Prosecutor* v. *Omar Hassan Ahmad Al Bashir*, Case No. ICC-02/05-01/09.

(*c*) *The Prosecutor* v. *Abdallah Banda Abakaer Nourain*, Case No. ICC-02/05-03/09.

(*d*) *The Prosecutor* v. *Abdel Raheem Muhammad Hussein*, Case No. ICC-02/05-01/12.

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[18] *Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, Pre-Trial Chamber I, Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation, 16 July 2015, No. ICC-01/13-34.

[19] *Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, Appeals Chamber, Decision on the admissibility of the Prosecutor's appeal against the "Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation", 6 November 2015, No. ICC-01/13 OA.

(*d*) Situation in the Central African Republic

(i) *Judgments delivered by the Trial Chambers*

(*a*) *The Prosecutor* v. *Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Case No. ICC-01/05-01/13, Public Redacted Version of Judgment pursuant to article 74 of the Rome Statute, 19 October 2016.

(*b*) *The Prosecutor* v. *Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08, Judgment pursuant to article 74 of the Rome Statute, 21 March 2016.

(ii) *Pending cases and proceedings*

(*a*) *The Prosecutor* v. *Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08.

(*b*) *The Prosecutor* v. *Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Case No. ICC-01/05-01/13.

(*e*) Situation in Kenya

(i) *Judgment delivered by the Appeals Chamber*

The Prosecutor v. *William Samoei Ruto and Joshua Arap Sang,* Case No. ICC-01/09-01/11, Judgment on the Appeals of Mr. William Samoei Ruto and Mr. Joshua Arap Sang against the Decision of Trial Chamber V(*a*) of 19 August 2015 entitled "Decision on Prosecution Request for Admission of Prior Recorded Testimony", 12 February 2016.

(ii) *Pending cases and proceedings*

(*a*) *The Prosecutor* v. *Walter Osapiri Barasa*, Case No. ICC-01/09-01/13.

(*b*) *The Prosecutor* v. *Paul Gicheru and Philip Kipkoech Bett*, Case No. ICC-01/09-01/15.

(*f*) Situation in Libya

Pending case and proceeding

The Prosecutor v. *Saif Al-Islam Gaddafi*, Case No. ICC-01/11-01/11.

(*g*) Situation in Côte d'Ivoire

Pending cases and proceedings[20]

(*a*) *The Prosecutor* v. *Laurent Gbagbo and Charles Blé Goudé*, Case No. ICC-02/11-01/15.

(*b*) *The Prosecutor* v. *Simone Gbagbo*, Case No. ICC-02/11-01/12.

[20] On 11 March 2015, Trial Chamber I joined the *Gbagbo* case (ICC-02/11-01/11) and the *Blé Goudé* case (ICC-02/11-02/11).

(*h*) Situation in Mali

(i) *Judgment delivered by Trial Chamber III*

The Prosecutor v. *Ahmad Al Faqi Al Mahdi*, Case No. ICC-01/12-01/15, Judgment and Sentence, 27 September 2016.

(ii) *Pending case and proceeding*

The Prosecutor v. *Ahmad Al Faqi Al Mahdi*, Case No. ICC-01/12-01/15.

D. International Criminal Tribunal for the former Yugoslavia[21]

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 (1993), adopted on 25 May 1993.[22]

1. Judgement delivered by the Appeals Chamber

Prosecutor v. *Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A, Judgement, 30 June 2016.

2. Judgements delivered by the Trial Chambers

(*a*) *Prosecutor* v. *Vojislav Šešelj*, Case No. IT-03-67-T, Judgement, 31 March 2016.

(*b*) *Prosecutor* v. *Radovan Karadzić*, Case No. IT-95-5/18-T, Judgement, 24 March 2016.

3. Pending cases and proceedings as at 31 December 2016

(*a*) *The Prosecutor* v. *Petar Jojić & Jovo Ostojić and Vjerica Radeta,* Case No. IT-03-67-R77.5 (2014–).

(*b*) *Prosecutor* v. *Goran Hadžić*, Case No. IT-04-75 (2004–).

(*c*) *Prosecutor* v. *Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pusić*, Case No. IT-04-74 (2004–).

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[21] 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. The texts are also available in English and French on the Tribunal's website at http://www.icty.org. For more information about the Tribunal's activities, see the Twenty-third and Twenty-fourth annual reports 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, for the periods from 1 August 2015 to 31 July 2016 (A/71/263–S/2016/670) and from 1 August 2016 to 31 July 2017 (A/72/266–S/2017/662), respectively.

[22] The Statute of the Tribunal is annexed to the report of the Secretary-General pursuant to Security Council resolution 808 (1993) of 22 February 1993 (S/25704 and Add.1).

(*d*) *Prosecutor* v. *Vojislav Šešelj*, Case No. IT-03-67 (2003–).

(*e*) *Prosecutor* v. *Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91 (1999–).

(*f*) *Prosecutor* v. *Ratko Mladić*, Case No. IT-09-92 (1995–).

(*g*) *Prosecutor* v. *Radovan Karadzić*, Case No. IT-95-5/18 (1995–).

E. Mechanism for International Criminal Tribunals[23]

The Mechanism for International Criminal Tribunals was established in 2010 by Security Council resolution 1966 (2010), adopted on 22 December 2010.[24] The Mechanism was created to carry out certain residual functions of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda,[25] including trial and appellate proceedings, the supervision and enforcement of sentences, and tracking the remaining fugitives.

No judgements were delivered by the Mechanism for International Criminal Tribunals in 2016.

Pending cases and proceedings as at 31 December 2016

(*a*) *Prosecutor* v. *Vojislav Šešelj*, Case No. MICT-16-99 (2016–).

(*b*) *Prosecutor* v. *Augustin Ngirabatware*, Case No. MICT-12-29 (2016–).

(*c*) *Prosecutor* v. *Radovan Karadzić*, Case No. MICT-13-55 (2016–).

(*d*) *Prosecutor* v. *Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96 (2015–).

F. Extraordinary Chambers in the Courts of Cambodia[26]

The Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period

[23] The texts of the orders, decisions and judgements are available on the Mechanism's website at http://www.unmict.org/. For more information about the Mechanism's activities, see the Fourth and Fifth annual reports of the International Residual Mechanism for Criminal Tribunals, for the period 1 July 2015 to 30 June 2016 (A/71/262–S/2016/669) and 1 July 2016 to 30 June 2017 (A/72/261–S/2017/661), respectively.

[24] The Statute of the Mechanism is contained in the annex to the resolution.

[25] The International Criminal Tribunal for Rwanda was a subsidiary body of the United Nations Security Council, established by Security Council resolution 955 (1994), adopted on 8 November 1994. The Statute of the Tribunal is in the annex to the resolution. The Tribunal closed on 31 December 2015. The texts of the orders, decisions and judgements are published in the *Recueil des ordonnances, decisions 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 on the Legacy website of the International Criminal Tribunal for Rwanda at https://unictr.irmct.org/en.

[26] The texts of the judgements, decisions and orders of the Extraordinary Chambers in the Courts of Cambodia are available on its website at http://www.eccc.gov.kh. For more information on the Court's activities, see the Report of the Secretary-General on the Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia of 16 August 2016 (A/71/338).

of Democratic Kampuchea, signed in Phnom Penh on 6 June 2003,[27] entered into force on 29 April 2005 and established the Extraordinary Chambers in the Courts of Cambodia to prosecute crimes committed during the period of Democratic Kampuchea.

1. Judgement delivered by the Supreme Court Chamber

Khieu Samphân and Nuon Chea, Case No. 002/01, Judgement, 23 November 2016.

2. Pending cases and proceedings as at 31 December 2016

(*a*) *Khieu Samphân and Nuon Chea,* Case No. 002/01 (2010–).

(*b*) *Khieu Samphân and Nuon Chea,* Case No. 002/02 (2010–).

(*c*) *Meas Muth*, Case No. 003 (2009–).

(*d*) *Yim Tith*, Case No. 004 (2009–).

(*e*) *Im Chaem*, Case No. 004/01 (2009–).

(*f*) *Ao An*, Case No. 004/02 (2009–).

G. Special Tribunal for Lebanon[28]

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,[29] and to the Security Council resolution 1757 (2007) adopted on 30 May 2007 to prosecute persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons.

1. Judgments delivered in Contempt Cases

(*a*) *Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, Case No. STL-14-06/T/CJ, Judgment, 15 July 2016.

(*b*) *Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L. (N.T.V.) and Ms. Karma Mohamed Tahsin Al Khayat*, Case No. STL-14-05/A/AP, Appeal Panel, Judgment, 8 March 2016.

2. Pending cases and proceedings as at 31 December 2016

(*a*) *Salim Jamil Ayyash, Mustafa Amine Badreddine, Hassan Habib Merhi, Hussein Hassan Oneissi and Assad Hassan Sabra*, Case No. STL-11-01 (2011–).

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[27] United Nations, *Treaty Series*, vol. 2329, p. 117.

[28] The texts of the indictments, decisions and orders of the Special Tribunal for Lebanon are available on the Tribunal's website at http://www.stl-tsl.org. For more information on the Tribunal's activities, see the Seventh and Eighth Annual Reports of the Special Tribunal for Lebanon, for the periods 1 March 2015 to 29 February 2016 and 1 March 2016 to 28 February 2017, respectively, available from https://www.stl-tsl.org/en/documents/annual-reports.

[29] United Nations, *Treaty Series*, vol. 2461, p. 257.

(*b*) *Al Jadeed [CO.] S.A.L./NEW TV S.A.L. and Karma Mohamed Tahsin Al Khayat*, Case No. STL-14-05 (2014–).

(*c*) *Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, Case No. STL-14-06 (2014–).

H. Residual Special Court for Sierra Leone[30]

The Special Court for Sierra Leone[31] was 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, 2002.[32] The Special Court was mandated to try those who bore 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.

As the Special Court completed its mandate and finished its judicial activities in 2013, the Residual Special Court for Sierra Leone superseded the Special Court. The Residual Special Court was established pursuant to an Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone,[33] signed in 2010 and entered into force in 2012.

The purpose of the Residual Special Court is to carry out the continuing obligations of the Special Court after its closure in 2013, such as witness protection, supervision of prison sentences, and management of the Special Court's archives. Johnny Paul Koroma is the only indicted person by the Special Court who is not in custody. Should he be arrested, the Residual Special Court will have jurisdiction to try him.

No judgments were delivered by the Residual Special Court for Sierra Leone in 2016.

[30] The texts of the decisions delivered by the Residual Special Court for Sierra Leone are available at the Residual Special Court's website at http://www.rscsl.org. For more information on the Residual Special Court's activities, see the Third Annual Report of the President of the Residual Special Court for Sierra Leone, available from http://www.rscsl.org/Documents/AnRpt2016.pdf.

[31] The texts of the judgements and decisions delivered by the Special Court for Sierra Leone are available at the Residual Special Court's website at http://www.rscsl.org. For more information on the Court's activities, see the Eleventh and Final Report of the President of the Special Court for Sierra Leone, available from http://www.rscsl.org/Documents/AnRpt11.pdf.

[32] For the text of the Agreement and the Statute of the Special Court dated 26 January 2002, see United Nations, *Treaty Series*, vol. 2178, p. 137.

[33] The Agreement and the Statute of the Residual Special Court were registered with the United Nations under No. 50125 (see also S/2012/741).

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

A. Austria

Austrian Federal Constitutional Court, Order of 25 February 2016, SV 2/2015-18

Labour dispute brought by a former employee against the International Atomic Energy Agency (IAEA)—Claim that immunity from legal process under Article VIII, Section 19, of the Headquarters Agreement, violates the European Convention on Human Rights—Inadmissibility of the case under Austrian law because the immunity of the IAEA is also based on its Statute to which the Headquarters Agreement is only *lex specialis*

According to article 140 para. 1 (*d*) in conjunction with article 140*a* of the Austrian Federal Constitutional Law, the Federal Constitutional Court pronounces on the unconstitutionality of state treaties on application by a person who, as a party in a legal matter that has been decided by a court of justice of first instance, alleges infringement of his rights because of the application of an unconstitutional state treaty, on the occasion of an appeal filed against that decision. A request for examination of the constitutionality of a statutory or treaty provision according to this procedure is permissible only if repealing the norm in question would redress the alleged unconstitutionality.

The application in case number SV 2/2015 was submitted by a former employee of the International Atomic Energy Agency (IAEA), on occasion of an appeal against a decision by the Viennese Labour Court of first instance. The Labour Court had refused to decide on claims resulting from the applicant's employment with the IAEA, relying on the immunity of the IAEA before national courts.

Before the Federal Constitutional Court, the applicant requested that article VIII section 19 of the Headquarters Agreement between the IAEA and the Republic of Austria (Federal Law Gazette No. 82/1958) granting the IAEA "immunity from every form of legal process except in so far as in any particular case the IAEA shall have expressly waived its immunity" be pronounced unconstitutional, arguing a violation of its due process rights under article 6 of the European Convention on Human Rights (ECHR). The ECHR enjoys the status of Austrian constitutional law. Article VIII section 19 provides for absolute immunity of the IAEA from jurisdiction in Austria.

By order of 25 February 2016, the Federal Constitutional Court declared the application inadmissible on grounds that repealing article VIII section 19 of the Headquarters Agreement would not have ended the immunity of the IAEA and the alleged unconstitutionality would not have been remedied. Immunity of the IAEA already resulted from article XV para. A. of the Statute of the IAEA, and labour disputes belong to the core of

immunity of international organizations. The Federal Constitutional Court pointed out that headquarters agreements are *leges speciales* to the statutes of international organizations. The applicant was therefore denied access to Austrian courts already on grounds of article XV para. A. of the Statute of the IAEA.

B. Canada

World Bank Group v. *Wallace, Supreme Court of Canada, Judgment of 29 April 2016, 2016 SCC 15*

Public international law—Jurisdictional immunity—International organizations—Financial institutions—Accused in Canadian criminal proceedings applying for third party production order to compel senior investigators of international financial organization to appear before court and produce documents—International financial organization claiming archival and personnel immunities under its Articles of Agreement—Whether claimed immunities apply to international financial organization—Bretton Woods and Related Agreements Act, R.S.C. 1985, c. B-7, sch. II, arts. I, III, s. 5(*b*), art. VII, ss. 1, 3, 5, 6, 8, sch. III, arts. I, V, s. 1(*g*), (*h*), art. VIII, ss. 1, 3, 5, 6, 8.

[…]

The World Bank Group is an international organization headquartered in Washington, D.C. composed of five separate organizations, including the International Bank for Reconstruction and Development ("IBRD") and the International Development Association ("IDA"). Each constituent organization has its own set of governing documents which set out the immunities and privileges the organization is to enjoy in the territory of each member state.

The World Bank Group provides loans, guarantees, credits and grants for development projects and programs in developing countries. The World Bank Group was originally one of the primary lenders for the project at the heart of this case, the Padma Multipurpose Bridge in Bangladesh. SNC-Lavalin Inc. was one of several companies bidding for a contract to supervise the construction of the bridge. The four individual respondents—three former employees of SNC-Lavalin and one representative of a Bangladeshi official—allegedly conspired to bribe Bangladeshi officials to award the contract to SNC-Lavalin. They are all charged with an offence under the Canadian *Corruption of Foreign Public Officials Act*.

The Integrity Vice Presidency ("INT") is an independent unit within the World Bank Group responsible for investigating allegations of fraud, corruption and collusion in relation to projects financed by the World Bank Group. It was the INT that had initially received a series of emails from tipsters suggesting there was corruption in the process for awarding the supervision contract, involving SNC-Lavalin employees. The INT later shared the tipsters' emails, its own investigative reports and other documents with the Royal Canadian Mounted Police ("RCMP").

The RCMP then sought and obtained authorizations to intercept private communications in order to obtain direct evidence of the accused's participation in corruption, as well as a search warrant. Sgt. D was assigned to prepare affidavits for the application. He largely relied on information the INT shared based on its communications with the tipsters, as

well as knowledge of the bidding process of a senior investigator with INT. Sgt. D also spoke directly to one of the tipsters. Sgt. D did not make any handwritten notes of his work as affiant. All of his emails for the period of the investigation were lost because of a computer problem, though many were recovered through other sources.

The Crown charged the four accused under the *Corruption of Foreign Public Officials Act* and joined their proceedings by direct indictment. The Crown intends to present intercepted communications at trial. For their part, the accused seek to challenge the wiretap authorizations pursuant to *R.* v. *Garofoli*, [1990] 2 S.C.R. 1421. In support of their application, the accused sought an order requiring production of certain INT records, as well as the validation of two subpoenas issued to the investigators of the INT.

However, the Articles of Agreement of the IBRD and the IDA provide that their archives shall be inviolable. In addition, the Articles of Agreement provide that all officers and employees shall be immune from legal process with respect to acts performed by them in their official capacity, except when the IBRD or the IDA waives this immunity. These immunities have been implemented in Canadian law by two Orders in Council, and the Articles of Agreement of the IBRD and the IDA have been approved by Parliament in their entirety through the *Bretton Woods and Related Agreements Act*.

Two issues were raised on the application: (1) whether the World Bank Group could be subject to a production order issued by a Canadian court given the immunities accorded to the IBRD and the IDA, and (2) if so, whether in the context of a challenge to the wiretap authorizations pursuant to *R.* v. *Garofoli*, the documents sought met the test for relevance.

With respect to the first issue, the trial judge found that the immunities and privileges claimed were *prima facie* applicable to the archives and personnel of the INT. However, he determined that the World Bank Group had waived these immunities by participating in the RCMP investigation. In any event, he was not persuaded that the documents at issue were "archives". Moreover, in his view, the term "inviolable" in the Articles of Agreement connoted protection from search and seizure or confiscation, but not from production for inspection. On the second issue, the trial judge concluded that the documents were likely relevant to issues that would arise on a *Garofoli* application. Accordingly, he ordered that the documents be produced for review by the court.

Held: The appeal should be allowed and the production order set aside.

Notwithstanding its operational independence, the INT's documents form part of either the IBRD's or the IDA's archives, and the INT's personnel benefit from legal process immunity for acts performed in an official capacity. Because the Articles of Agreement of the IBRD and the IDA provide the legal foundation for the World Bank Group's integrity regime, and by extension the INT, the immunities outlined in those Articles of Agreement shield the documents and personnel of the INT.

Section 3 of Articles VII and VIII of the IBRD's and the IDA's Articles of Agreement, respectively, which confirms that the IBRD and the IDA can be the subject of a lawsuit in a court of competent jurisdiction, is not engaged in the present appeal. The present appeal involves a request for document production directed at personnel of the INT in the context of criminal charges. It is not the kind of action contemplated by s. 3.

Nor are the immunities outlined in ss. 5 and 8 of Articles VII and VIII, respectively, "functional" in the sense that the immunities only apply where it has been demonstrated

that their application is necessary for the organization to carry out its operations and responsibilities. The signatory states of the Articles of Agreement set out, in advance, the specific immunities that enable the IBRD and the IDA to fulfill their responsibilities. The very wording of s. 1 of Articles VII and VIII suggests that this was an explicit choice. To import an added condition of functional necessity would undermine what appears to be a conscious choice to enumerate specific immunities rather than to rely on a broad, functional grant of immunity.

As regards the inviolability of the organization's archives, the trial judge erred in construing so narrowly an immunity that is integral to the independent functioning of international organizations. The immunity outlined in s. 5 shields the entire collection of stored documents of the IBRD and the IDA from both search and seizure and from compelled production. This broader interpretation is consistent with the plain and ordinary meaning of the terms of s. 5 and is in harmony with its object and purpose. Partial voluntary disclosure of some documents by the World Bank Group does not amount to a waiver of this immunity. Indeed, the archival immunity is not subject to waiver.

The personnel immunity also applies since the challenged subpoenas required Mr. Haynes and Mr. Kim to give evidence. It is uncontested that the INT personnel were performing acts in their official capacity when they obtained the information that the accused now seek. It is also undisputed that the scope of the legal process immunity in s. 8 of Articles VII and VIII shields employees acting in an official capacity from not only civil suit and prosecution, but from legal processes such as subpoenas. While this personnel immunity can be waived, the object and purpose of the treaty favour an express waiver requirement. Given the absence of such express waiver, the trial judge erred in his finding that the World Bank Group waived this immunity.

Even if the World Bank Group did not possess any of the immunities identified in the Articles of Agreement, the production order should not have been issued under the framework for third party production set out in *R.* v. *O'Connor*, [1995] 4 S.C.R. 411. A *Garofoli* application is more limited in scope than a typical *O'Connor* application, relating as it does to the admissibility of evidence, namely intercepted communications. An *O'Connor* application made in the context of a *Garofoli* application must be confined to the narrow issues that a *Garofoli* application is meant to address. The *Garofoli* framework assesses the reasonableness of a search when wiretaps are used to intercept private communications. A search will be reasonable if the statutory preconditions for a wiretap authorization have been met. A *Garofoli* application does not determine whether the allegations underlying the wiretap application are ultimately true—a matter to be decided at trial—but rather whether the affiant had a reasonable belief in the existence of the requisite statutory grounds. What matters is what the affiant knew or ought to have known at the time the affidavit in support of the wiretap authorization was sworn.

While the *O'Connor* process may be used to obtain records for purposes of a *Garofoli* application, the relevance threshold applicable to such an application is narrower than that on a typical *O'Connor* application. To obtain third party records in a *Garofoli* application an accused must show a reasonable likelihood that the records will be of probative value to the narrow issues in play on such an application. This test for third party production is also consistent with another form of discovery on a *Garofoli* application: cross-examination of the affiant. Both forms of discovery serve similar purposes and engage similar

policy concerns. The justifications that warrant limiting cross-examination of the affiant apply with equal force to third party production applications. The "reasonable likelihood" threshold is appropriate to the *Garofoli* context and fair to the accused.

The trial judge erred in assessing the accused's arguments. Although he correctly placed the burden on the accused, he did not properly assess the relevance of the documents being sought. In particular, he blurred the distinction in a *Garofoli* application between the affiant's knowledge and the knowledge of others involved in the investigation. In this case, that distinction is crucial. While the documents sought may be relevant to the ultimate truth of the allegations in the affidavits, they are not reasonably likely to be of probative value to what Sgt. D knew or ought to have known since he did not consult them. The accused have not shown that it was unreasonable for him to rely on the information he received from the INT and other officers. Furthermore, accepting the argument that the INT's records should be presumed relevant because first party documents were lost or not created, would require a significant change to the *O'Connor* framework. Such a change is not necessary. Any loss of information must be addressed through the remedial framework set forth in *R.* v. *La*, [1997] 2 S.C.R. 680, which may well be the appropriate framework for addressing any prejudice resulting from the World Bank Group's assertion of its immunities. The accused did not argue these issues on this appeal, and they are best left to the trial judge.

Cases Cited

[…]

The judgment of the Court was delivered by Moldaver and Côté JJ. —

[1] Corruption is a significant obstacle to international development. It undermines confidence in public institutions, diverts funds from those who are in great need of financial support, and violates business integrity. Corruption often transcends borders. In order to tackle this global problem, worldwide cooperation is needed. When international financial organizations, such as the appellant World Bank Group, share information gathered from informants across the world with the law enforcement agencies of member states, they help achieve what neither could do on their own. As this Court recently affirmed, "[i]nternational organizations are active and necessary actors on the international stage": *Amaratunga* v. *Northwest Atlantic Fisheries Organization*, 2013 SCC 66, [2013] 3 S.C.R. 866, at para. 1.

[2] However, without any sovereign territory of their own, international organizations are vulnerable to state interference. In light of this, member states often agree to grant international organizations various immunities and privileges to preserve their orderly, independent operation. Commonly, an organization's archives are shielded from interference, and its personnel are made immune from legal process.

[3] In the present appeal, the World Bank Group's Integrity Vice Presidency ("INT") investigated allegations that representatives of SNC-Lavalin Inc. ("SNC-Lavalin") were planning to bribe officials of the Government of Bangladesh to obtain a contract related to the construction of the Padma Multipurpose Bridge (the "Padma Bridge"), a project valued at US$2.9 billion. The World Bank Group shared some of the information from its investigation with the Royal Canadian Mounted Police ("RCMP"). On the basis of this information and other information gathered by the RCMP, the RCMP obtained wiretap

authorizations. Subsequently, the individual accused (the "respondents") were jointly charged with one count of bribing foreign public officials under the *Corruption of Foreign Public Officials Act*, S.C. 1998, c. 34.

[4] The respondents challenged the wiretap authorizations pursuant to *R.* v. *Garofoli*, [1990] 2 S.C.R. 1421. In support of their *Garofoli* application, they applied for a third party production order pursuant to *R.* v. *O'Connor*, [1995] 4 S.C.R. 411, to compel senior investigators of the World Bank Group, Paul Haynes and Christopher Kim, to appear before a Canadian court and produce documents.

[5] The trial judge granted the applications. The World Bank Group, supported by the Crown respondent and several interveners, appeals from that order and seeks to have it overturned for two reasons.

[6] First, the World Bank Group submits that the schedules of the *Bretton Woods and Related Agreements Act*, R.S.C. 1985, c. B-7 ("*Bretton Woods Act*"), grant immunity to the archives and personnel of certain constituent organizations of the World Bank Group, including the International Bank for Reconstruction and Development ("IBRD") and the International Development Association ("IDA"). Under Schedules II and III of the *Bretton Woods Act*, the IBRD's and the IDA's "archives … shall be inviolable" ("archival immunity"), and "[a]ll governors, executive directors, alternates, officers and employees … (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the [IBRD or IDA] waives this immunity" ("personnel immunity"): sch. II, art. VII, ss. 5 and 8; sch. III, art. VIII, ss. 5 and 8.

[7] Accordingly, the World Bank Group submits that the documents ordered produced by the trial judge are immune from production.

[8] Second, the World Bank Group and the Crown challenge the relevance of the documents sought in the context of the *Garofoli* application. They submit that the documents ordered produced by the trial judge are not relevant on the *Garofoli* application. Therefore, in their view, the trial judge's order must be set aside on that basis as well.

[9] For reasons that follow, we agree with the appellant on both issues. Accordingly, we would allow the appeal and set aside the trial judge's order.

I. *Facts*

[10] The World Bank Group is an international organization headquartered in Washington, D.C. It is composed of five separate organizations, the IBRD, the IDA, the International Finance Corporation, the Multilateral Investment Guarantee Agency and the International Centre for Settlement of Investment Disputes. Canada has ratified the Articles of Agreement and conventions establishing these organizations, along with 187 other member states.

[11] Among the World Bank Group's most important responsibilities, it provides loans, guarantees, credits and grants for development projects and programs in developing countries. The World Bank Group was originally one of the primary lenders for the project at the heart of this case. The Padma Bridge project was to construct a six-kilometre long road and railway bridge over the Padma River in Bangladesh. The bridge was intended to link the capital, Dhaka, to the isolated southwest region. Through the IDA, the World Bank

Group was to lend the Government of Bangladesh US$1.2 billion of the total US$2.9 billion cost of the bridge. The rest was to be financed by an international consortium of development banks and agencies.

[12] SNC-Lavalin was one of several companies bidding for a contract to supervise the construction of the bridge (the "Supervision Contract"). A committee of Bangladeshi officials evaluated the bids. The respondents allegedly conspired to bribe the committee to award the contract to SNC-Lavalin. Three of the respondents are former employees of SNC-Lavalin: Kevin Wallace, Ramesh Shah and Mohammad Ismail. The fourth, Zulfiquar Bhuiyan, was allegedly a representative of Abul Chowdhury, a Bangladeshi official alleged to be involved in this matter. They are all charged with an offence under the *Corruption of Foreign Public Officials Act*.

[13] The INT is responsible for investigating allegations of fraud, corruption and collusion in relation to projects financed by the World Bank Group. The INT is an independent unit within the World Bank Group, reporting directly to its President. Mr. Haynes and Mr. Kim were senior investigators with the INT. Mr. Haynes was the primary investigator in this matter.

[14] In 2010, the INT received the first of a series of emails suggesting there was corruption in the process for awarding the Supervision Contract. The tipsters alleged SNC-Lavalin employees were negotiating to pay a portion of the contract amount to Bangladeshi officials in exchange for favourable treatment. Ultimately, the INT received emails from four tipsters. All but one remains anonymous even to the RCMP. A second tipster has shared his or her identity with Mr. Haynes, but has refused to share it with the RCMP. The other two never revealed their identities to any investigator in this matter.

[15] In an earlier ruling which is not challenged in this Court, two of the four tipsters were found to be confidential informants under Canadian law, while the other two were not. Therefore, the identities of two informants are protected by informer privilege. As of the hearing of this appeal, the Crown had no intention to call any of the tipsters as witnesses at trial.

[16] The INT contacted the RCMP in March 2011 and shared the tipsters' emails, investigative reports and other documents with the RCMP. The RCMP then sought a wiretap authorization to intercept private communications pursuant to Part VI of the *Criminal* Code, R.S.C. 1985, c. C-46, in order to obtain direct evidence of the respondents' participation in corruption. The authorization was granted, along with two further authorizations.

[17] The process of applying for these authorizations is at the heart of this matter. Sgt. Jamie Driscoll was assigned to prepare an affidavit for the initial application (also known as an information to obtain). In preparing that affidavit and two subsequent affidavits, Sgt. Driscoll largely relied on information the INT shared based on its communications with the tipsters, as well as Mr. Haynes's knowledge of the bidding process. Sgt. Driscoll also spoke directly to one of the tipsters but not to the others.

[18] Sgt. Driscoll did not make any handwritten notes of his work as affiant. All of his emails for the period of the investigation were lost because of a computer problem, though many were recovered through other sources. The respondents rely on these deficiencies in support of their production applications. More will be said about these deficiencies in our discussion of the *Garofoli* application.

[19] The RCMP applied for and was granted its first wiretap authorization on May 24, 2011. Further authorizations were granted on June 24, 2011 and August 8, 2011. A search warrant was granted in September 2011.

[20] Mr. Ismail and Mr. Shah were charged first, in early 2012. Both were committed for trial after a preliminary hearing in April 2013 and indicted in May 2013. On September 17, 2013, the Crown charged Mr. Wallace and Mr. Bhuiyan and, the following month, joined their proceedings to Mr. Ismail's and Mr. Shah's by direct indictment.

[21] The Crown intends to present intercepted communications at trial. In addition, an alleged co-conspirator, Muhammad Mustafa, has agreed to testify as a Crown witness against the respondents.

[22] As a result of the investigation, the World Bank Group cancelled its financing for the Padma Bridge and debarred SNC-Lavalin from participating in World Bank Group-funded projects for 10 years.

II. *Decision Below*

[23] The decision under review arises from an application brought in the Ontario Superior Court of Justice, in which the respondents sought the validation of two subpoenas issued to Mr. Haynes and Mr. Kim, as well as an order requiring production of the following documents (the "INT's records"):

> *a.* All notes, memoranda, emails, correspondence and reports received or sent by Mr. Paul Haynes of INT regarding the Investigation;
>
> *b.* All source documents from all so-called "tipsters" sent to INT, whether or not such information was shared with the RCMP as part of INT's cooperation with the RCMP investigation into the Padma Bridge Project;
>
> *c.* All emails and other communications between INT and the tipsters;
>
> *d.* Any sanctions or settlements entered into by the World Bank with any third parties as a result of the Investigation;
>
> *e.* Any other investigative materials relevant to the Investigation in the possession of other World Bank officials, including Christina Ashton-Lewis (Senior Institutional Intelligence Officer), Kunal Gupta (World Bank's Case Intake Unit), Laura Valli (Senior investigator) and Christopher Kim; and
>
> *f.* All communications between INT, representatives of SNC, representatives of the Bangladeshi government, members [of] the RCMP and/or the Crown regarding the Investigation, the related RCMP investigation and/or the charges or proceedings commenced by the Crown before the Courts in Ontario.

(2014 ONSC 7449, [2014] O.J. No. 6534 (QL), at Appendix A)

Two issues were raised on the application: (1) whether the World Bank Group could be subject to a production order issued by a Canadian court, and (2) if so, whether in the context of a *Garofoli* application, the documents sought met the test for relevance.

[24] Nordheimer J., the trial judge, found that the INT's archives and personnel formed part of the IBRD, whose immunities are set out in Article VII of the IBRD Articles of Agreement and implemented in Canadian law by an Order in Council, the *International*

Monetary Fund and International Bank for Reconstruction and Development Order, P.C. 1945–7421. The immunities and privileges set out in Article VII were therefore *prima facie* applicable to the archives and personnel of the INT. The trial judge further found that both Mr. Haynes and Mr. Kim were acting in an official capacity and were therefore shielded by the personnel immunity provided in Article VII, s. 8. However, he determined that the World Bank Group had waived this personnel immunity.

[25] In so concluding, the trial judge rejected the Crown's submission that the World Bank Group's personnel immunity could only be waived expressly, determining instead that it could be waived either implicitly or expressly. He provided three reasons for this.

[26] First, the trial judge noted that the relevant provisions of the Articles of Agreement do not explicitly require an *express* waiver, as do the provisions providing legal process immunity to the United Nations and to the International Monetary Fund.

[27] Second, the trial judge reasoned by analogy that just as a privilege holder cannot choose to selectively reveal some privileged communications but not others, the World Bank Group similarly could not choose to provide some of its documents for use in the criminal prosecution but refuse to provide other relevant documents.

[28] Finally, the trial judge relied on the "benefit/burden exception" to Crown immunity discussed by La Forest J. in *Sparling* v. *Quebec (Caisse de dépôt et placement)*, [1988] 2 S.C.R. 1015. He found that the World Bank Group had chosen to benefit from Canadian criminal proceedings; for example, it had sought to obtain materials seized pursuant to the search warrants and information obtained from the intercepted communications. Consequently, the World Bank Group was obliged to accept the attendant burdens of doing so, which includes compliance with procedural rules.

[29] The trial judge then turned to the archival immunity provided in Article VII, s. 5. He found that the different sections within Article VII of the IBRD Articles of Agreement do not set out discrete free-standing immunities; in other words, archival immunity was not separate from personnel immunity. Accordingly, he concluded that if the World Bank Group had waived its immunity, it had done so for all purposes. In any event, he was not persuaded that the documents at issue should be considered part of the "archives", which he limited to historical records. Moreover, in his view, the term "inviolable" connoted protection from search and seizure or confiscation, but not from production for inspection.

[30] On the second issue, the trial judge concluded that the documents sought by the respondents were likely relevant to issues that would arise on a *Garofoli* application. Virtually all of the information relied on by the affiant in the affidavits filed in support of the wiretap authorizations came from the INT and its investigative file. The affiant did not keep handwritten notes of his work preparing the affidavits. Accordingly, the trial judge ordered that the documents listed under headings *a*., *b*., *c*. and *e*., in para. 23 above, be produced for review by the court, the second step in an O'Connor application.

[31] The World Bank Group appealed the decision to this Court, with leave, on the authority of *Dagenais* v. *Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, and *A. (L.L.)* v. *B. (A.)*, [1995] 4 S.C.R. 536, which allows a third party affected by an order of a superior court judge to challenge that order before this Court.

III. *Parties' Submissions*

[32] The World Bank Group submits that the INT is a division of the IBRD, and enjoys, as a result, the immunities conferred on that organization. Its personnel are therefore immune from legal processes and its documents are immune from any legal process of compulsion, including production of information and evidence through subpoenas, warrants, or court orders. In their view, the immunities and privileges granted by the Articles of Agreement should be interpreted in a generous and liberal manner, as the immunities are necessary to avoid undue interference in the operations of an international organization.

[33] The World Bank Group argues that the term "waiver" as it applies to its personnel immunity under s. 8 must be interpreted as meaning "express waiver" only, which they define as an expressly stated, positive and intentional act by the President of the World Bank Group or its Executive Board. Regarding the inviolability of the archives under s. 5, the World Bank Group argues that "archives" includes contemporaneous documents, and that archival immunity can never be waived.

[34] The Crown argues that the production order was erroneously issued under Canadian law, and should not have been made regardless of the World Bank Group's immunities. The application for production was brought within the context of a *Garofoli* application to attack the wiretap authorizations. The respondents must therefore show that the evidence sought has a reasonable likelihood of assisting in the *Garofoli* application. On a *Garofoli* application, the affidavit before the authorizing judge is assessed based on what the affiant "knew or ought to have known", not whether the information is true (*R.* v. *Pires*, 2005 SCC 66, [2005] 3 S.C.R. 343, at para. 41). Thus, the documents sought will only be relevant if they can demonstrate that the affiant knew or ought to have known that the information he relied on was false.

[35] The respondent Mr. Wallace argues that the materials sought are likely relevant for the purposes of both a third party records application under the *O'Connor* framework, and the *Garofoli* application. He argues that the RCMP investigative file is incomplete as the affiant did not make adequate notes, and submits that the affiant acknowledged in cross-examination that he had misrepresented facts in his affidavits.

[36] On the issue of immunity, Mr. Wallace argues that there is no evidence explaining how the INT fits within the World Bank Group, or which immunities, if any, apply to the INT.

[37] Mr. Wallace further argues that the INT's personnel are only immune from legal process insofar as is necessary for the INT to perform its functions without undue interference. Mr. Wallace submits that production of the documents sought would not unduly interfere with the IBRD's operations and that, in any event, the INT's investigative file is simply not a part of the IBRD's archives. Finally, Mr. Wallace argues that the immunities of the World Bank Group's constituent organizations are subject to implicit waiver, and that the World Bank Group waived any immunity by its conduct when it actively participated in the domestic criminal investigation and prosecution of the respondents.

[38] On the issue of immunity, the respondent Mr. Bhuiyan also submits that s. 3 of Article VII—stating that "[a]ctions may be brought against the [IBRD]" by private parties in jurisdictions in which the IBRD has a legal presence—demonstrates that Parliament did not intend for the World Bank Group to be immune from Canadian judicial process.

[39] A number of interveners also presented submissions before this Court. Transparency International Canada Inc. and Transparency International e.V. stress the importance of protecting whistleblowers, and submit that failure to uphold an international organization's immunities in a context such as this may result in a chilling effect on these organizations' cooperation with domestic criminal prosecutions. The European Bank for Reconstruction and Development, the Organisation for Economic Co-operation and Development, the African Development Bank Group, the Asian Development Bank, the Inter-American Development Bank and the Nordic Investment Bank submit that the waiver of archival and personnel immunities must always be express, and can never be implied. In their view, only a requirement of express waiver can provide the needed protection and ensure uniformity across international organizations' member states.

[40] The British Columbia Civil Liberties Association, for its part, submits that the right to make full answer and defence, recognized in both domestic and international law, compels the recognition of an implied waiver of immunity in certain circumstances. In a similar vein, the Criminal Lawyers' Association (Ontario) argues that, when deciding whether to compel an international organization to produce its records in the context of a criminal proceeding, the public interest in upholding the immunity must be balanced against the accused's constitutional right to make full answer and defence.

IV. *Analysis*

A. Admission of Fresh Evidence

[41] As a preliminary matter, the respondents ask that portions of the World Bank Group's record and factum be struck out on the ground that they constitute fresh evidence that was not before the trial judge. They primarily take issue with two affidavits. The Mikhlin-Oliver affidavit provides information about the organization and operations of the World Bank Group, and some background on the investigation in the present case. The Gilliam affidavit sets out the chronology of the prosecution, and describes the state of disclosure. Much of the evidence contained in the affidavits was presented in some form before the trial judge.

[42] As the present matter is an appeal of a pre-trial motion, we do not have the benefit of a full trial record. In addition, the World Bank Group did not appear in front of the trial judge to assert its immunity. It relied instead on the Crown to do so, which it was entitled to do. Although the affidavits are not admissible as fresh evidence, we find that they assist in completing the record before this Court (see *Law Society of British Columbia* v. *Mangat*, S.C.C., No. 27108, August 31, 2000, order by Arbour J. (*Bulletin of Proceedings*, September 29, 2000, at p. 1542); *Taypotat* v. *Taypotat*, S.C.C., No. 35518, August 7, 2014, order by Moldaver J. (*Bulletin of Proceedings*, August 29, 2014, at p. 1292). Consequently, we admit the affidavits for the limited purpose of providing procedural context to this appeal, which includes the extent of the information which the Crown has disclosed to the respondents.

B. The Archival and Personnel Immunities Conferred by the Articles of Agreement

(1) Background

[43] The World Bank Group does not itself benefit from any immunities conferred by international treaty, and the parties to the present dispute have not pleaded any immunity

flowing from customary international law. Rather, certain immunities have been conferred on the World Bank Group's five constituent organizations by their 188 member states. As outlined above, these constituent organizations are the IBRD, the IDA, the International Finance Corporation, the Multilateral Investment Guarantee Agency and the International Centre for Settlement of Investment Disputes. Each of these five institutions has its own set of governing documents, which set out the immunities and privileges the organization is to enjoy in the territory of each member state. The Articles of Agreement of the IBRD and the IDA are most relevant for the purposes of the present appeal.

[44] The IBRD was created alongside the International Monetary Fund at the Bretton Woods Conference in 1944. Its principal purpose was to promote the reconstruction and development of its member states by providing financing on more favourable terms: Articles of Agreement of the IBRD, Article I. Article VII of the IBRD's Articles of Agreement sets out the immunities and privileges to be accorded to the IBRD in the territories of each member state.

[45] The IDA was created in 1960. Its purpose is to further the IBRD's overall objective of promoting economic development by providing financing on more favourable terms to less-developed countries in particular: Articles of Agreement of the IDA, Article I. It was through the IDA that the World Bank Group sought to loan the Government of Bangladesh US$1.2 billion for the construction of the Padma Bridge. The IDA's immunities are set out in Article VIII of its Articles of Agreement and are, for the purposes of the present appeal, identical to those accorded to the IBRD.

[46] The immunities accorded in the Articles of Agreement of the IBRD and the IDA have been implemented in Canadian law by two Orders in Council, the *International Monetary Fund and International Bank for Reconstruction and Development Order*, and the *International Development Association, International Finance Corporation and Multilateral Investment Guarantee Agency Privileges and Immunities Order*, SOR/2014-137 (collectively the "Orders in Council"). The Articles of Agreement of the IBRD and the IDA have been "approved" by Parliament in their entirety through the *Bretton Woods Act*. There is no dispute between the parties that the relevant immunities have the force of law in Canada.

[47] As is the case with implementing legislation, the Articles of Agreement of the IBRD and the IDA must be interpreted in accordance with the general rules of interpretation set out in the *Vienna Convention on the Law of Treaties*, Can. T.S. 1980 No. 37 ("*Vienna Convention*"): *Febles* v. *Canada (Citizenship and Immigration)*, 2014 SCC 68, [2014] 3 S.C.R. 431, at paras. 11–12; *Thibodeau* v. *Air Canada*, 2014 SCC 67, [2014] 3 S.C.R. 340, at para. 35; *Pushpanathan* v. *Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, at paras. 51–52; *Thomson* v. *Thomson*, [1994] 3 S.C.R. 551, at pp. 577–78. These general rules, set out in Articles 31 and 32 of the *Vienna Convention*, are similar to the modern approach to statutory interpretation affirmed by this Court in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27. It is worth reproducing them at length:

Article 31
General rule of interpretation

1. A treaty shall 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.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(*a*) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(*b*) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account together with the context:

(*a*) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(*b*) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(*c*) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32
Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(*a*) leaves the meaning ambiguous or obscure; or

(*b*) leads to a result which is manifestly absurd or unreasonable.

Thus, pursuant to the *Vienna Convention*, the scope of the immunities at issue must be interpreted in accordance with the ordinary meaning of the treaty terms and in light of their purpose and object.

[48] Sections 5 and 8 of the IBRD's and the IDA's Articles of Agreement provide as follows:

IBRD Articles of Agreement, Article VII

Section 5 *Immunity of archives*

The archives of the Bank shall be inviolable.

…

Section 8 *Immunities and privileges of officers and employees*

All governors, executive directors, alternates, officers and employees of the Bank

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;

IDA Articles of Agreement, Article VIII

Section 5 *Immunity of Archives*

The archives of the Association shall be inviolable.

…

Section 8 *Immunities and Privileges of Officers and Employees*

All Governors, Executive Directors, Alternates, officers and employees of the Association

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Association waives this immunity;

[49] There remains a certain ambiguity regarding where the INT fits within the World Bank Group's overall structure, and whether it benefits in Canada from the immunities conferred on the World Bank Group's constituent entities. This ambiguity remains in large part because of a dearth of evidence in the record. From this, the trial judge limited himself to noting that the INT is "an independent unit within the World Bank Group reporting directly to the President", and that it was unclear "whether the INT is structurally part of one of the five entities making up the World Bank Group, in terms of its governance, or whether it is separate and apart from them" (para. 24).

[50] Notwithstanding this operational independence, we are of the view that the INT's documents form part of either the IBRD's or the IDA's archives, and that the INT's personnel benefit from either the IBRD's or the IDA's legal process immunity for acts performed in an official capacity. Because these immunities are identical, we need not determine conclusively whether it is Article VII of the IBRD's Articles of Agreement or Article VIII of the IDA's Articles of Agreement that applies.

[51] The INT forms part of the World Bank Group's integrity regime. It is charged with identifying and investigating allegations and other indications that sanctionable practices may have occurred in connection with projects financed by the World Bank Group, and in commencing internal sanctions proceedings when appropriate. The legal foundation for this integrity regime is laid out by the Articles of Agreement of the IBRD and the IDA, which require these organizations to make arrangements to ensure that funds are used for their intended purpose and with due attention to economy and efficiency. Article III, s. 5(*b*) of the IBRD Articles of Agreement provides:

(*b*) The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

[52] In the same spirit, Article V, ss. 1(*g*) and 1(*h*) of the IDA Articles of Agreement provide:

(*g*) The Association shall make arrangements to ensure that the proceeds of any financing are used only for the purposes for which the financing was provided, with due attention to considerations of economy, efficiency and competitive international trade and without regard to political or other non-economic influences or considerations.

(*h*) Funds to be provided under any financing operation shall be made available to the recipient only to meet expenses in connection with the project as they are actually incurred.

[53] Because the Articles of Agreement of the IBRD and the IDA provide the legal foundation for the World Bank Group's integrity regime, and by extension the INT, common sense demands that the immunities outlined in those Articles of Agreement shield the documents and personnel of the INT. After all, the immunities outlined in the respective Articles of Agreement are accorded to enable the IBRD and the IDA to fulfill the functions

with which they are entrusted: s. 1, Article VII of the IBRD Articles of Agreement; s. 1, Article VIII of the IDA Articles of Agreement. In support of this conclusion, the trial judge observed that the letterhead used by the Director, Operations for the INT bears the name of the IBRD, which provides some evidence that the World Bank Group considers the INT to be part of the IBRD. We turn now to consider the immunities set out in ss. 5 and 8, namely, when they apply, their scope, and under what conditions they may be waived.

(2) Is Section 3 Engaged?

[54] Mr. Bhuiyan argues that Article VII, s. 3 of the IBRD's Articles of Agreement (or Article VIII, s. 3 of the IDA's Articles of Agreement) expressly permits the respondents' document production order, notwithstanding the IBRD's or the IDA's other immunities. Section 3 reads as follows:

> Actions may be brought against the [IBRD or IDA] only in a court of competent jurisdiction in the territories of a member in which the [IBRD or IDA] has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the [IBRD or IDA].

[55] In our view, s. 3 is not engaged in the present appeal. Section 3 confirms that the IBRD and the IDA, unlike many other international organizations, can be the subject of a lawsuit in a court of competent jurisdiction. This can be explained on the grounds that the IBRD and the IDA, in addition to other international development banks, engage in borrowing and lending operations and, in order to attract lender confidence, the IBRD's and the IDA's creditors must have access to courts to recover their claims: A. Reinisch and J. Wurm, "International Financial Institutions before National Courts", in D. D. Bradlow and D. B. Hunter, eds., *International Financial Institutions and International Law* (2010), 103, at pp. 123–24; P. Sands and P. Klein, *Bowett's Law of International Institutions* (6th ed. 2009), at p. 496. The present appeal involves a request for document production directed at personnel of the INT in the context of criminal charges. It is simply not the kind of action contemplated by s. 3.

(3) Are the Immunities Outlined in the Articles of Agreement "Functional"?

[56] The respondents argue that the immunities outlined in ss. 5 and 8 are "functional". On the respondents' understanding, a functional immunity is one that only applies where it has been specifically demonstrated that the immunity is necessary for the organization to carry out its operations and responsibilities. This was indeed the case for the immunity considered by this Court in *Amaratunga*. By contrast, an immunity said to be "absolute" is not subject to this case-by-case determination of functional necessity.

[57] To support their theory, the respondents draw this Court's attention to s. 1, which states as follows: "To enable the [IBRD or IDA] *to fulfill the functions with which [they are] entrusted*, the status, immunities and privileges [set forth or provided] in this Article shall be accorded to the [IBRD or IDA] in the territories of each member."

[58] A plain reading suggests that this is merely a descriptive, purposive clause. It states the reason for according the IBRD and the IDA the immunities set out in Article VII and Article VIII of their respective Articles of Agreement. As the Court of First Instance

of Brussels concluded with regards to similar immunities outlined in the governing agreement of the African Development Bank, this kind of purposive clause explains why the enumerated immunities were granted. It is not meant to require international organizations to justify the application of the asserted immunity: *Scimet* v. *African Development Bank* (1997), 128 I.L.R. 582, at p. 584. Our conclusion that the provision is only an interpretive aid is further supported by the fact that, unlike ss. 3, 5 and 8, s. 1 is not implemented in Canadian law through the Orders in Council.

[59] In addition, the ss. 5 and 8 immunities are not subject to any express condition of functional necessity. This distinguishes ss. 5 and 8 from the functional immunity provision this Court considered in *Amaratunga*, which stated that the Northwest Atlantic Fisheries Organization "shall have in Canada the legal capacities of a body corporate and shall, *to such extent as may be required* for the performance of its functions, have the privileges and immunities set forth in Articles II and III of the Convention for the United Nations" (*Northwest Atlantic Fisheries Organization Privileges and Immunities Order*, SOR/80-64, s. 3(1)).

[60] It is noteworthy that this express condition is stipulated in s. 6 of Article VII and Article VIII. By virtue of s. 6, "all property and assets" of the IBRD and the IDA shall be free from "restrictions, regulations, controls and moratoria of any nature", but only "[t]o the extent necessary to carry out the operations provided for in [the Articles of Agreement]". These words would be meaningless if the privileges and immunities outlined in Articles VII and VIII were already subject to this condition by virtue of s. 1.

[61] Fundamentally, the respondents misinterpret the role and significance of s. 1. Functional forms of immunity appear to be inspired from the broad and flexible immunity outlined in the *Charter of the United Nations*, Can. T.S. 1945 No. 7. ("U.N. Charter"): A. Reinisch, "Transnational Judicial Conversations on the Personality, Privileges, and Immunities of International Organizations—An Introduction", in Reinisch, ed., *The Privileges and Immunities of International Organizations in Domestic Courts* (2013), 1, at p. 5. Rather than enumerate specific immunities, Article 105(1) of the U.N. Charter simply provides that "[t]he Organization shall enjoy in the territory of each of its Members *such privileges and immunities as are necessary for the fulfilment of its purposes*". Article 105(2) of the U.N. Charter extends this protection to representatives and officials of the U.N., subject to the same condition. As Anthony J. Miller has stated:

> This approach of formulating privileges and immunities in general terms, rather than as a series of detailed rules, enabled the drafters of the Charter to closely connect privileges and immunities "to the realization of the purposes of the Organization, to the free functioning of its organs and to the independent exercise of the functions and duties of officials", rather than trying to formulate concrete provisions dealing with particular privileges and immunities. [Footnote omitted.]
>
> ("The Privileges and Immunities of the United Nations" (2009), 6 *I.O.L.R.* 7, at p. 16)

[62] However, flexibility is bought at the price of uncertainty, as what is "functional" is essentially a matter of perspective: J. Klabbers, *An Introduction to International Organizations Law* (3rd ed. 2015), at p. 132; C. W. Jenks, *International Immunities* (1961), at p. 26; A. Reinisch, *International Organizations Before National Courts* (2000), at p. 206.

[63] Instead of committing the IBRD and the IDA to this uncertainty, the signatory states of the Articles of Agreement set out, in advance, the specific immunities that would

enable these organizations to fulfill their responsibilities. The very wording of s. 1 suggests that this was an explicit choice; the immunities are accorded "[t]o enable the [IBRD or IDA] to fulfill the functions with which [they are] entrusted". To import an added condition of functional necessity would undermine what appears to be a conscious choice to enumerate the specific immunities rather than to rely on one broad, functional grant of immunity.

[64] For these reasons, we are of the view that s. 1 does not impose a condition of functional necessity that must be satisfied whenever any immunity is asserted. However, as stated previously, the scope of these immunities should nevertheless be interpreted purposively, taking into consideration their object outlined in s. 1.

[65] Having concluded that the immunities outlined in ss. 5 and 8 apply without the need for further justification, we turn now to interpret the scope of these immunities.

(4) Scope of the IBRD's and the IDA's Archival Immunity

[66] By virtue of s. 5, the "archives of the [IBRD and the IDA] shall be inviolable". The trial judge concluded that this immunity does not shield the IBRD from the respondents' document production order, since, on the basis of a definition provided in a dictionary, "archives" refers exclusively to a "collection of historical documents or records" (para. 54). In addition, the trial judge was of the view that the word "inviolable" only entails protection from a search and seizure order, but not protection from an order for compelled production.

[67] In our respectful view, the trial judge erred in construing so narrowly an immunity that is integral to the independent functioning of international organizations. On our reading, the immunity outlined in s. 5 shields the entire collection of stored documents of the IBRD and the IDA from both search and seizure and from compelled production. This broader interpretation is consistent with the plain and ordinary meaning of the terms of s. 5 and is in harmony with its object and purpose.

[68] First, the word "archive" is frequently defined as a collection of records and documents held by an organization. For example, the *Canadian Oxford Dictionary* (2nd ed. 2004) defines "archive" as: "1 a collection of public, corporate or institutional documents or records. 2 the place where these are stored" (p. 67). The definition in the *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003) is similarly broad: "1: a place in which public records or historical documents are preserved; *also*: the material preserved—often used in pl.; 2: a repository or collection esp. of information" (p. 65) as is the *Black's Law Dictionary* (10th ed. 2014) definition: "1. A place where public, historical, *or* institutional records are systematically preserved. 2. Collected and preserved public, historical, *or* institutional papers and records. 3. Any systematic compilation of materials, esp. writings, in physical or electronic form" (pp. 127–28 (emphasis added)).

[69] For their part, the *Collins Canadian Dictionary* (2010), at p. 42, defines "archives" as "a collection of records or documents", while the *Multidictionnaire de la langue française* (2009) defines the French word "*archives*" firstly as a [Translation] "[c]ollection of documents, *regardless of their dates* or their nature, produced or received by a person or an organization for his or its needs or for the performance of his or its activities, and retained for their general information value" (p. 123 (emphasis added)). Finally, *Le Lexis: dictionnaire érudit de la langue française* (2009) describes "*archives*", at p. 103, as a [Translation] "[c]ollection of documents (handwritten papers, printed material, *etc.*) that come from an organization, a family or an individual".

[70] This broader meaning of "archive", which does not differentiate between current versus historical documents, reflects its known usage in international law. The *Vienna Convention on Consular Relations*, Can. T.S. 1974 No. 25, defines "consular archives" as including "*all* the papers, documents, correspondence books, films, tapes and registers of the consular post, together with the ciphers and codes, the card- indexes and any article of furniture intended for their protection or safekeeping" (art. 1(1)(*k*)). This definition has also been applied to the *Vienna Convention on Diplomatic Relations*, Can. T.S. 1966 No. 29, where the term "archives" is undefined: J. P. Grant and J. C. Barker, eds., *Parry and Grant Encyclopaedic Dictionary of International Law* (2nd ed. 2004), at p. 35 ("archives, diplomatic and consular"); see also J. R. Fox, *Dictionary of International and Comparative Law* (3rd ed. 2003), at p. 86 ("diplomatic archives"). The *Dictionnaire de droit international public* (2001) defines "*archives d'une organisation internationale*" (archives of an international organization) in a similarly broad fashion: [Translation] "Papers and documents related to the functioning of an international organization and whose status is determined by the treaties applicable to that organization" (J. Salmon, ed., at p. 80).

[71] Interpreting "archives" in the narrow manner proposed by the trial judge would not only deviate from the manner in which this term is commonly used in international law, it would also undermine the purpose of s. 5. As this Court held in *Amaratunga*, immunities are extended to international organizations to protect them from intrusions into their operations and agenda by a member state or a member state's courts: paras. 29, 30 and 45. Shielding an organization's entire collection of stored documents, including official records and correspondences, is integral to ensuring their proper, independent functioning. Without it, the "confidential character of communications between states and the organisation, or between officials within the organisation, would be less secure": Sands and Klein, at p. 502; see also Jenks, *International Immunities*, at p. 54; and K. Ahluwalia, *The Legal Status, Privileges and Immunities of the Specialized Agencies of the United Nations and Certain Other International Organizations* (1964), at p. 81.

[72] This explains why archival immunity is affirmed in the constituent agreements of many international organizations in such broad, uncompromising terms: Sands and Klein, at pp. 501–2. Jenks has described the importance of international organizations' archival immunity as follows:

> The inviolability of international archives does not appear to have raised any special problem; it is designed partly to secure the safe-keeping of original documents and partly to preserve the confidential character of official records; *it appears to be generally accepted as self-evident that to recognise that the legislative, executive or judicial agencies of any one country may call for the production of documents from international archives would be to undermine the freedom and independence* with which international staffs are expected to advise the international organisations towards which they have been vested by treaty with an exclusive responsibility and to *destroy the whole basis of reciprocal respect for the confidential character of such archives without which governments would be unwilling to communicate confidential information to international organisations.* [Emphasis added; footnotes omitted.]
>
> (*International Immunities*, at p. 54)

[73] Limiting the protection of s. 5 to historical documents would leave exposed current and more sensitive documents, whose confidentiality is likely more important to the IBRD's independent functioning. For all of these reasons, we are of the view that

the term "archives" is better construed as the entire collection of stored documents of the IBRD and the IDA, including their official records and correspondences. We note, in passing, that the House of Lords endorsed a similarly broad definition of "archives" in the context of interpreting the International Tin Council's immunities: *Shearson Lehman Bros Inc.* v. *Maclaine Watson & Co. (No. 2)*, [1988] 1 All E.R. 116, at p. 122.

[74] For its part, the term "inviolable" connotes a sweeping protection against any form of involuntary production. Maintaining a distinction, as the trial judge suggests, between document production orders as opposed to searches and seizures is neither suggested by the plain meaning of this provision, nor is it consonant with the purpose for extending immunity. As we have said, shielding the IBRD's and the IDA's archives is integral to ensuring their proper, independent functioning. However, what is truly important is not the documents themselves but the information they contain. From this vantage point, it is irrelevant whether this information is revealed in the context of a search and seizure or in the context of a compelled production order. The purpose underlying the immunity is thwarted in either case.

[75] Admittedly, the use of the word "inviolable" may seem out of place when referring to the archives of an organization. However strange it may seem to speak of violence towards a collection of stored records, documents and correspondence, the term "inviolable" has a history in international law that sheds some light on its meaning in the IBRD and the IDA Articles of Agreement.

[76] Originating in the law of diplomacy, and later becoming common in treaties establishing certain international organizations, the term "inviolable" implies freedom from unilateral interference. Originally, the person of an ambassador was said to be inviolable. This entailed freedom from arrest or any kind of restraint: C. Morton, *Les privilèges et immunités diplomatiques* (1927), at p. 49; J. Secretan, *Les immunités diplomatiques des représentants des états membres et des agents de la Société des nations* (1928), at p. 67. Inviolability was later extended to the premises of diplomatic missions. In that context, "inviolable" connoted an immunity from the enforcement of local law within the premises by local authorities: E. Denza, *Diplomatic Law* (3rd ed. 2008), at p. 136.

[77] Prior to the First World War, many international organizations were accorded the same privileges and immunities known to the law of diplomacy: E. H. Fedder, "The Functional Basis of International Privileges and Immunities: A New Concept in International law and Organization" (1960), 9 *Am. U.L. Rev.* 60, at p. 60. The personnel of many of the first international organizations were thus inviolable: L. Preuss, "Diplomatic Privileges and Immunities of Agents Invested with Functions of an International Interest" (1931), 25 *A.J.I.L.* 694, at pp. 696–99; J. L. Kunz, "Privileges and Immunities of International Organizations" (1947), 41 *A.J.I.L.* 828, at pp. 828–32. Later, the 1920 *Covenant of the League of Nations* provided that the "buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable": art. 7, (1920), 1 *League of Nations O.J.* 3, at p. 5. A subsequent agreement concluded in 1926 between the League and Switzerland provided that "inviolable" meant "no agent of the public authority may enter" without the consent of the League: "Communications from the Swiss Federal Council Concerning the Diplomatic Immunities to be Accorded to the Staff of the League of Nations and of the International Labour Office" (1926), 7 *League of Nations O.J.* 1422, at p. 1423. The agreement also added for the first time that the "archives of the League of Nations are inviolable": *ibid.*

[78] This formulation was reprised in the Articles of Agreement of the IBRD. It has since become standard in the constituent agreements of many international organizations: see *e.g. Convention on the Privileges and Immunities of the United Nations*, Can T.S. 1948 No. 2, Article II, s. 4; *Vienna Convention on Diplomatic Relations*, art. 24. Though the word has been applied in various contexts—to persons, premises, and archives—this history makes clear that the term "inviolable" generally entails freedom from any form of unilateral interference on the part of a state.

[79] This broad interpretation also finds support in international law scholarship. The inviolability of archives is said to afford a complete shield from investigation, confiscation or interference of any kind with the documents belonging to the archives of a state or international organization: A. s. Muller, *International Organizations and their Host States: Aspects of their Legal Relationship* (1995), at p. 205; Fox, at p. 173 ("inviolability"); Morton, at pp. 56–57. Philippe Sands and Pierre Klein write that, as a consequence of the principle that archives are inviolable, "international organisations are under no duty to produce any official document or part of their archives in the context of litigations before national courts": p. 502, citing C. W. Jenks, *The Proper Law of International Organisations* (1962), at p. 234. This appears to reflect the consensus view of international law scholarship: see *e.g.* Jenks, *International Immunities*, at p. 54; B. Sen, *A Diplomat's Handbook of International Law and Practice* (3rd ed. 1980), at pp. 117–118; J. Wouters, s. Duquet and K. Meuwissen, "The Vienna Conventions on Diplomatic and Consular Relations", in A. F. Cooper, J. Heine and R. Thakur, eds., *The Oxford Handbook of Modern Diplomacy* (2013), 510, at p. 523. The United Nations Special Rapporteur was also of the view that the absolute secrecy of an organization's archives protects it from all forms of document production orders: Díaz Gonzáles, "Fifth report on relations between states and international organizations (second part of topic)", U.N. Doc. A/CN.4/438, in *Yearbook of the International Law Commission 1991* (1994), vol. II, Part One 91, at pp. 95–99.

[80] Finally, it is worth noting that our interpretation is also favoured in the decisions of foreign courts. The Court of Appeal for England and Wales has written recently that "the universal definition of 'inviolability' is freedom from *any act of interference* on the part of the receiving state": *R. (Bancoult)* v. *Secretary of State for Foreign and Commonwealth Affairs (No. 3)*, [2014] EWCA Civ 708, [2014] 1 W.L.R. 2921, at para. 61 (emphasis added). What is more, several foreign courts appear to have specifically taken it for granted that the inviolability of archives shields international organizations from document production orders: *Taiwan* v. *United States District Court for the Northern District of California*, 128 F.3d 712 (9th Circ. 1997); *Iraq* v. *Vinci Constructions* (2002), 127 I.L.R. 101 (Brussels C.A.); *Owens, Re Application for Judicial Review*, [2015] NIQB 29, at paras. 63 and 69 (BAILII).

[81] For these reasons, we are of the view that the protection afforded by s. 5 extends to all documents stored by the INT from search, seizure and compelled production.

[82] Further, we are of the view that partial voluntary disclosure of some documents by the World Bank Group does not amount to a waiver of this immunity. Indeed, on our reading, the archival immunity is not subject to waiver.

[83] We have already concluded that archival inviolability connotes protection from all forms of unilateral interference with the INT's archives. As a result, where the World Bank Group has expressly permitted the consultation of documents in its archives, the

sanctity of those archives is respected. In other words, where there is express permission to consult, s. 5 simply does not apply. This likely explains why, unlike the personnel immunity outlined in s. 8, s. 5 does not contemplate the possibility of waiver. Moreover, where a document has been copied and transmitted to an external party, that transmitted copy no longer forms part of the "archives", as we have defined them. As a result, s. 5 no longer applies to shield that transmitted copy. The House of Lords arrived at a similar conclusion in *Shearson Lehman Bros Inc.*

[84] Since a qualified representative of the IBRD or the IDA never agreed to allow Canadian officials to consult the documents sought in the document production order, s. 5 applies.

(5) The IBRD's and the IDA's Legal Process Immunity for Personnel

[85] While this appeal primarily concerns a document production order, the challenged subpoenas also required Mr. Haynes and Mr. Kim to give evidence, in addition to producing the requested documents. Therefore, we will address the immunity that protects officers and employees from legal process.

[86] Section 8 provides that "[a]ll [g]overnors, [e]xecutive [d]irectors, [a]lternates, officers and employees of the [IBRD or IDA] (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the [IBRD or IDA] waives this immunity".

[87] It is uncontested that Mr. Haynes and Mr. Kim were performing acts in their official capacity when they obtained the information that the respondents now seek. It is also undisputed that the scope of the legal process immunity in s. 8 shields employees acting in an official capacity from not only civil suit and prosecution, but from legal processes such as subpoenas. After all, an employee who fails to respect a production order would be found in contempt of court. In addition, for the reasons we have outlined above, the application of this immunity is not made conditional on a case-by-case determination of functional necessity. Therefore, the s. 8 immunity applies, subject to waiver.

(6) Were the Immunities Waived?

[88] The respondents submit that the archival and personnel immunities were waived by the World Bank Group, given the substantial amount of information it shared with the RCMP and its interest in the fruits of the RCMP investigation. As we have already discussed, the archival immunity is not subject to waiver, be it express, implied or constructive. Regarding the organization's personnel immunity, we disagree with the respondents, for the reasons that follow.

[89] The only reference to "waiver" in Article VII or in Article VIII is in the text of s. 8, which confers immunity from legal process to the personnel of the IBRD or the IDA "except when the [IBRD or IDA] waives this immunity". The term "waiver" is not qualified, leaving open the question of whether waiver means "express" waiver, or whether implied waiver or constructive forms of waiver are recognized.

[90] In our view, the object and purpose of the treaty favour an express waiver requirement. The application of the IBRD's and the IDA's immunity provisions are not subject to a case-by-case determination. To read "waiver" as including forms of

implied or constructive waiver would subject immunities to case-by-case determination. Representatives of the World Bank Group would be required to appear in national courts to argue whether their conduct amounted to waiver, or whether for other reasons they should be deemed to have waived their immunity. Such a conclusion would be inconsistent with our view that the IBRD's and the IDA's immunities apply without further justification.

[91] Further, the purpose for according immunity to international organizations and their personnel is to shield these organizations from interference by member states: *Amaratunga*, at para. 29. Personnel immunity is foundational to international organizations. As one scholar opines, personnel immunity is necessary "to avoid harassment of international officials by way of court proceedings, civil or criminal" (Ahluwalia, at p. 106). Put another way, "[i]f the official acts of world authorities are open to question in national courts in proceedings against the officials of those authorities, every attempt to establish an effective world organization is liable to be completely nullified by the interference of national agencies" (C. W. Jenks, "Some Problems of an International Civil Service" (1943), 3 *P.A.R.* 93, at p. 103). Jenks further observes that the function of international immunities is to "protect international officials against the consequences of the nonexistence of anything in the nature of a federal government to which they can appeal for protection and support against any attempt to prevent the effective discharge of their official duties" (*ibid*.).

[92] In this context, limiting the IBRD's or the IDA's waiver to strictly its own express terms is consistent with the purpose of protecting them from state interference (Muller, at p. 162). If "waiver" is limited to express waiver, then the IBRD and the IDA will be firmly in control of when their personnel may be subjected to domestic legal processes. This is essential for a large international organization which, in this case, comprises 188 member states. If s. 8 were to include forms of implied and constructive waiver—concepts that are liable to vary significantly across the globe—then inconsistencies from jurisdiction to jurisdiction could cause considerable confusion and interfere with the IBRD's and the IDA's orderly operations.

[93] It must be remembered that when a state agrees to become a member of the World Bank Group, it makes a deliberate decision to accept the terms and conditions of the organization, which include archival and personnel immunities. It is part of the original agreement that in exchange for admission to the international organization, every member state agrees to accept the concept of collective governance. As a result, no single member can attempt to control the institution, which may occur if domestic courts apply local and variegated conceptions of implied and constructive waiver. Requiring express waiver avoids these problems.

[94] Further, exposing the World Bank Group to forms of implied or constructive waiver could have a chilling effect on collaboration with domestic law enforcement. Such an effect would be harmful, since multilateral banks including the World Bank Group are particularly well placed to investigate corruption and to serve at the frontlines of international anti-corruption efforts.

[95] Turning to the case at bar, the IBRD's and the IDA's personnel immunity was never expressly waived. On every occasion when the INT provided information, it reiterated that it did so without prejudice to its immunity.

[96] In our view, the trial judge erred in his finding that the World Bank Group waived its immunity, a finding which appears to be rooted in a fairness-based constructive

waiver. He found that the INT could not selectively share some of the information, documents or correspondences in its possession with Canadian law enforcement officials. However, the doctrine of selective waiver, developed at common law, should not inform the interpretation of an international treaty.

[97] The trial judge further found that the World Bank Group could not assist in and "benefit" from a Canadian prosecution without sharing other information that might be valuable to the respondents. In support of this theory, the trial judge relied on the "benefit/burden exception" to Crown statutory immunity applied in *Sparling*. The "benefit/burden" principle is a common law exception to the Crown's presumed immunity from statute, which applies when the Crown accepts a statutory benefit that has a sufficient nexus with an attendant burden. The exception is intended to prevent the Crown from simultaneously taking advantage of rights conferred by legislation while invoking its own immunity to shield itself from related liabilities or restrictions.

[98] The "benefit/burden exception" applied in *Sparling* does not apply to the immunities at issue in the present case. First, the World Bank Group has in no relevant sense "benefitted" from the Crown's prosecution of the respondents. Prosecutions are, by their very nature, in the interest of the public and not the complainant or any other private party. Second, the rationale underlying the "benefit/burden exception" has no bearing in the context of international organization immunity. The doctrine is premised on the fact that if the Crown was permitted to take advantage of rights provided by legislation but not be subject to the attendant liabilities or restrictions, it would benefit from more than what the statute intended to provide: P. W. Hogg, *Liability of the Crown in Australia, New Zealand and the United Kingdom* (1971), at p. 183, cited by La Forest J. in *Sparling*, at p. 1023. This rationale simply has no relevance in this context.

[99] For these reasons, the personnel immunity in s. 8 applies to shield Mr. Haynes and Mr. Kim from being compelled by a Canadian court, and the immunity has not been waived. Given our finding, it is not necessary to determine whether the subpoenas were validly served on Mr. Haynes and Mr. Kim.

C. The Domestic Law of Third Party Production in Criminal Cases

[…]

V. *Conclusion*

[148] The World Bank Group's immunities cover the records sought and its personnel, and they have not been waived. Moreover, the INT's records were not disclosable under Canadian law. In the result, we would dismiss the respondents' motion to strike, allow the appeal and set aside the production order.

[149] In the circumstances, given the issues raised, we would make no order as to costs. In doing so, we wish to make it clear that we do not accept Mr. Bhuiyan's submission as to the World Bank Group's conduct in this case.

Appeal allowed.

[…]

Part Four

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46. Use of Force

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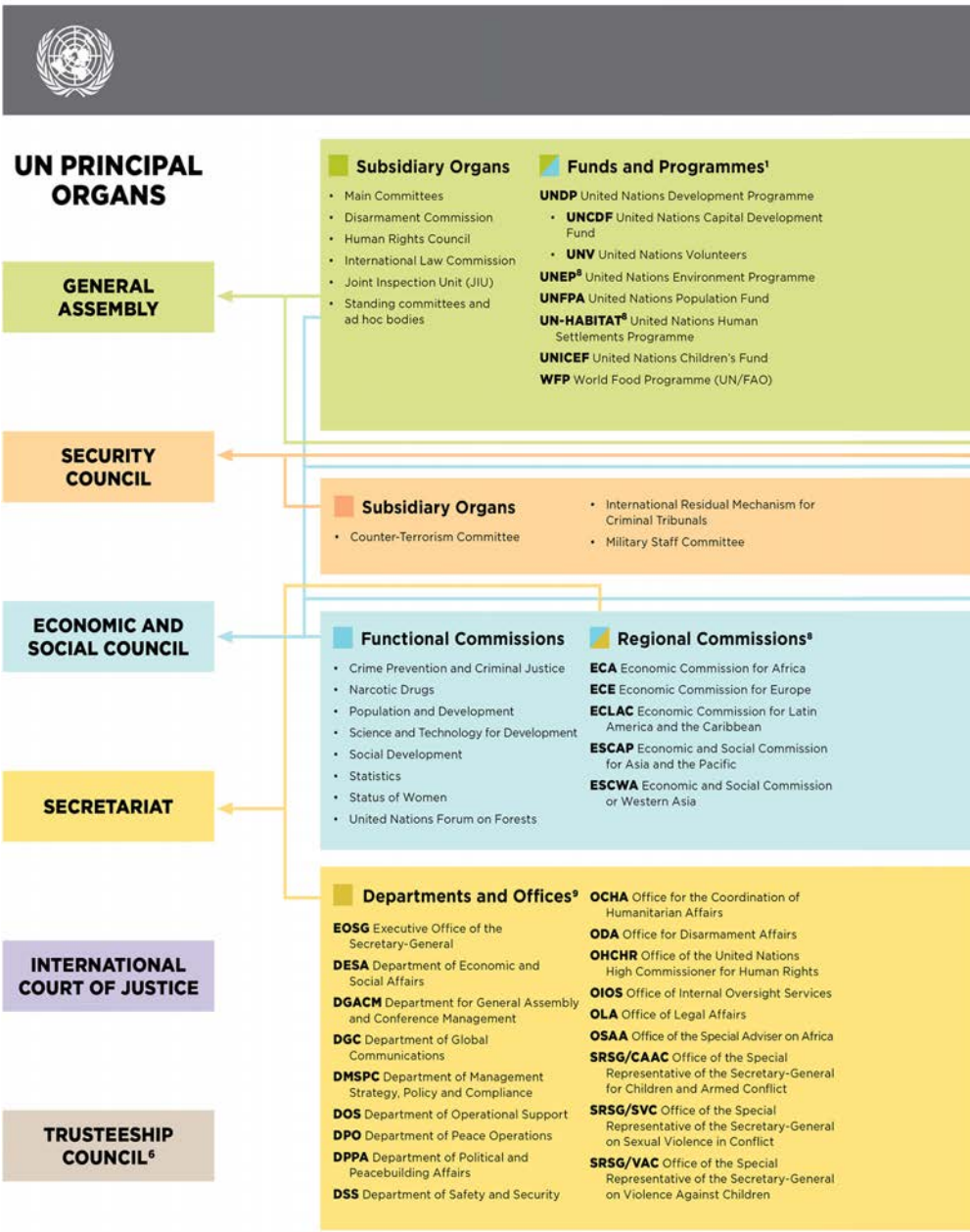
UN PRINCIPAL ORGANS
GENERAL ASSEMBLY
SECURITY COUNCIL
ECONOMIC AND SOCIAL COUNCIL
SECRETARIAT
INTERNATIONAL COURT OF JUSTICE
TRUSTEESHIP COUNCIL[6]
Subsidiary Organs
Main Committees
Disarmament Commission
Human Rights Council
International Law Commission
Joint Inspection Unit (JIU)
Standing committees and ad hoc bodies
Funds and Programmes[1]
UNDP United Nations Development Programme
UNCDF United Nations Capital Development Fund
UNV United Nations Volunteers
UNEP[5] United Nations Environment Programme
UNFPA United Nations Population Fund
UN-HABITAT[6] United Nations Human Settlements Programme
UNICEF United Nations Children's Fund
WFP World Food Programme (UN/FAO)
Subsidiary Organs
Counter-Terrorism Committee
International Residual Mechanism for Criminal Tribunals
Military Staff Committee
Functional Commissions
Crime Prevention and Criminal Justice
Narcotic Drugs
Population and Development
Science and Technology for Development
Social Development
Statistics
Status of Women
United Nations Forum on Forests
Regional Commissions[8]
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 or Western Asia
Departments and Offices[9]
EOSG Executive Office of the Secretary-General
DESA Department of Economic and Social Affairs
DGACM Department for General Assembly and Conference Management
DGC Department of Global Communications
DMSPC Department of Management Strategy, Policy and Compliance
DOS Department of Operational Support
DPO Department of Peace Operations
DPPA Department of Political and Peacebuilding Affairs
DSS Department of Safety and Security
OCHA Office for the Coordination of Humanitarian Affairs
ODA Office for Disarmament Affairs
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
SRSG/CAAC Office of the Special Representative of the Secretary-General for Children and Armed Conflict
SRSG/SVC Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict
SRSG/VAC Office of the Special Representative of the Secretary-General on Violence Against Children

The United Nations System

Research and Training

UNIDIR United Nations Institute for Disarmament Research

UNITAR United Nations Institute for Training and Research

UNSSC United Nations System Staff College

UNU United Nations University

Other Entities

ITC International Trade Centre (UN/WTO)

UNCTAD[1,8] United Nations Conference on Trade and Development

UNHCR[1] Office of the United Nations High Commissioner for Refugees

UNOPS[1] United Nations Office for Project Services

UNRWA[1] United Nations Relief and Works Agency for Palestine Refugees in the Near East

UN-WOMEN[1] United Nations Entity for Gender Equality and the Empowerment of Women

Related Organizations

CTBTO PREPARATORY COMMISSION Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization

IAEA[1,3] International Atomic Energy Agency

ICC International Criminal Court

IOM[1] International Organization for Migration

ISA International Seabed Authority

ITLOS International Tribunal for the Law of the Sea

OPCW[3] Organization for the Prohibition of Chemical Weapons

WTO[1,4] World Trade Organization

- Peacekeeping operations and political missions
- Sanctions committees (ad hoc)
- Standing committees and ad hoc bodies

Peacebuilding Commission

HLPF High-level political forum on sustainable development

Other Bodies

- Committee for Development Policy
- Committee of Experts on Public Administration
- Committee on Non-Governmental Organizations
- Permanent Forum on Indigenous Issues

UNAIDS Joint United Nations Programme on HIV/AIDS

UNGEGN United Nations Group of Experts on Geographical Names

Research and Training

UNICRI United Nations Interregional Crime and Justice Research Institute

UNRISD United Nations Research Institute for Social Development

UNISDR United Nations Office for Disaster Risk Reduction

UNODC[1] United Nations Office on Drugs and Crime

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

UNOP[2] United Nations Office for Partnerships

UNOV United Nations Office at Vienna

Specialized Agencies[1,5]

FAO Food and Agriculture Organization of the United Nations

ICAO International Civil Aviation Organization

IFAD International Fund for Agricultural Development

ILO International Labour Organization

IMF International Monetary Fund

IMO International Maritime Organization

ITU International Telecommunication Union

UNESCO United Nations Educational, Scientific and Cultural Organization

UNIDO United Nations Industrial Development Organization

UNWTO World Tourism Organization

UPU Universal Postal Union

WHO World Health Organization

WIPO World Intellectual Property Organization

WMO World Meteorological Organization

WORLD BANK GROUP[7]

- **IBRD** International Bank for Reconstruction and Development
- **IDA** International Development Association
- **IFC** International Finance Corporation

Notes:

1 Members of the United Nations System Chief Executives Board for Coordination (CEB).
2 UN Office for Partnerships (UNOP) is the UN's focal point vis-a-vis the United Nations Foundation, Inc.
3 IAEA and OPCW report to the Security Council and the General Assembly (GA).
4 WTO has no reporting obligation to the GA, but contributes on an ad hoc basis to GA and Economic and Social Council (ECOSOC) work on, inter alia, finance and development issues.
5 Specialized agencies are autonomous organizations whose work is coordinated through ECOSOC (intergovernmental level) and CEB (inter-secretariat level).
6 The Trusteeship Council suspended operation on 1 November 1994, as on 1 October 1994 Palau, the last United Nations Trust Territory, became independent.
7 International Centre for Settlement of Investment Disputes (ICSID) and Multilateral Investment Guarantee Agency (MIGA) are not specialized agencies in accordance with Articles 57 and 63 of the Charter, but are part of the World Bank Group.
8 The secretariats of these organs are part of the UN Secretariat.
9 The Secretariat also includes the following offices: The Ethics Office, United Nations Ombudsman and Mediation Services, and the Office of Administration of Justice.

This Chart is a reflection of the functional organization of the United Nations System and for informational purposes only. It does not include all offices or entities of the United Nations System.

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