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OF THE  
INTERNATIONAL  
LAW COMMISSION

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Volume II  
Instruments and final texts



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## **NOTE ON VOLUME II**

As indicated in the Foreword, this volume reproduces the multi-lateral conventions concluded under the auspices of the United Nations based on drafts prepared by the International Law Commission, in annex V, as well as other texts, including draft articles, finalized by the Commission, in annex VI.



## ANNEX V

**MULTILATERAL CONVENTIONS CONCLUDED  
UNDER THE AUSPICES OF THE UNITED NATIONS  
BASED ON DRAFTS PREPARED BY THE  
INTERNATIONAL LAW COMMISSION**

**1. Conventions on the Law of the Sea  
and Optional Protocol**

- (a) CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE. DONE AT GENEVA, ON 29 APRIL 1958\*

*The States Parties to this Convention*

*Have agreed as follows:*

**PART I. TERRITORIAL SEA**

Section I. General

*Article 1*

1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.

2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

*Article 2*

The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

Section II. Limits of the territorial sea

*Article 3*

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line

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\* Came into force on 10 September 1964. United Nations, *Treaty Series*, vol. 516, p. 205.

along the coast as marked on large-scale charts officially recognized by the coastal State.

#### *Article 4*

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

3. Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

#### *Article 5*

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters.

#### *Article 6*

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

*Article 7*

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semicircle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semicircle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.

*Article 8*

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

*Article 9*

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads

and indicate them on charts together with their boundaries, to which due publicity must be given.

#### *Article 10*

1. An island is a naturally-formed area of land, surrounded by water, which is above water at high tide.
2. The territorial sea of an island is measured in accordance with the provisions of these articles.

#### *Article 11*

1. A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.
2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

#### *Article 12*

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.
2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

#### *Article 13*

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

Section III. Right of innocent passage

Subsection A. Rules applicable to all ships

*Article 14*

1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage includes stopping and anchoring, but only insofar as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress.

4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

6. Submarines are required to navigate on the surface and to show their flag.

*Article 15*

1. The coastal State must not hamper innocent passage through the territorial sea.

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

*Article 16*

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

4. There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.

#### *Article 17*

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

#### Subsection B. Rules applicable to merchant ships

##### *Article 18*

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

##### *Article 19*

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

(a) if the consequences of the crime extend to the coastal State; or

(b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) if the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) if it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

#### *Article 20*

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

#### Subsection C. Rules applicable to government ships other than warships

#### *Article 21*

The rules contained in subsections A and B shall also apply to government ships operated for commercial purposes.

*Article 22*

1. The rules contained in subsection A and in article 18 shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

## Subsection D. Rules applicable to warships

*Article 23*

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

## PART II. CONTIGUOUS ZONE

*Article 24*

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

(a) prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

(b) punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

## PART III. FINAL ARTICLES

*Article 25*

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

*Article 26*

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

*Article 27*

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article 28*

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 26. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 29*

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article 30*

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

*Article 31*

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 26:

- (a) of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 26, 27 and 28;
- (b) of the date on which this Convention will come into force, in accordance with article 29;
- (c) of requests for revision in accordance with article 30.

### *Article 32*

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 26.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

(b) CONVENTION ON THE HIGH SEAS. DONE AT GENEVA,  
ON 29 APRIL 1958\*

*The States Parties to this Convention,*

*Desiring to codify the rules of international law relating to the high seas,*

*Recognizing that the United Nations Conference on the Law of the Sea, held at Geneva from 24 February to 27 April 1958, adopted the following provisions as generally declaratory of established principles of international law,*

*Have agreed as follows:*

### *Article 1*

The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

### *Article 2*

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and

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\* Came into force on 30 September 1962. United Nations, *Treaty Series*, vol. 450, p. 11.

by the other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal States:

- (1) freedom of navigation;
- (2) freedom of fishing;
- (3) freedom to lay submarine cables and pipelines;
- (4) freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

### *Article 3*

1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea coast should have free access to the sea. To this end States situated between the sea and a State having no sea coast shall by common agreement with the latter, and in conformity with existing international conventions, accord:

(a) to the State having no sea coast, on a basis of reciprocity, free transit through their territory; and

(b) to ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.

2. States situated between the sea and a State having no sea coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.

### *Article 4*

Every State, whether coastal or not, has the right to sail ships under its flag on the high seas.

### *Article 5*

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and

control in administrative, technical and social matters over ships flying its flag.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

#### *Article 6*

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

#### *Article 7*

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an intergovernmental organization flying the flag of the organization.

#### *Article 8*

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

#### *Article 9*

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

#### *Article 10*

1. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:

(a) the use of signals, the maintenance of communications and the prevention of collisions;

(b) the manning of ships and labour conditions for crews taking into account the applicable international labour instruments;

(c) the construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

#### *Article 11*

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

#### *Article 12*

1. Every State shall require the master of a ship sailing under its flag, insofar as he can do so without serious danger to the ship, the crew or the passengers:

(a) to render assistance to any person found at sea in danger of being lost;

(b) to proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, insofar as such action may reasonably be expected of him;

(c) after a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

2. Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and—where circumstances so require—by

way of mutual regional arrangements cooperate with neighbouring States for this purpose.

#### *Article 13*

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free.

#### *Article 14*

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

#### *Article 15*

Piracy consists of any of the following acts:

(1) any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) any act of inciting or of intentionally facilitating an act described in subparagraph 1 or subparagraph 2 of this article.

#### *Article 16*

The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

#### *Article 17*

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 15. The same applies

if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

#### *Article 18*

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

#### *Article 19*

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

#### *Article 20*

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

#### *Article 21*

A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

#### *Article 22*

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

- (a) that the ship is engaged in piracy; or
  - (b) that the ship is engaged in the slave trade; or
  - (c) that though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.
2. In the cases provided for in subparagraphs (a), (b) and (c) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected

ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

### *Article 23*

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 24 of the Convention on the Territorial Sea and the Contiguous Zone, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:

(a) the provisions of paragraphs 1 to 3 of this article shall apply *mutatis mutandis*;

(b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high

seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an enquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

#### *Article 24*

Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

#### *Article 25*

1. Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall cooperate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radioactive materials or other harmful agents.

#### *Article 26*

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

*Article 27*

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

*Article 28*

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

*Article 29*

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

*Article 30*

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

*Article 31*

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

*Article 32*

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article 33*

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 31. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 34*

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article 35*

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

*Article 36*

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 31:

(a) of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 31, 32 and 33;

(b) of the date on which this Convention will come into force, in accordance with article 34;

(c) of requests for revision in accordance with article 35.

*Article 37*

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 31.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

(c) CONVENTION ON FISHING AND CONSERVATION OF THE  
LIVING RESOURCES OF THE HIGH SEAS.  
DONE AT GENEVA, ON 29 APRIL 1958\*

*The States Parties to this Convention,*

Considering that the development of modern techniques for the exploitation of the living resources of the sea, increasing man's ability to meet the need of the world's expanding population for food, has exposed some of these resources to the danger of being over-exploited,

Considering also that the nature of the problems involved in the conservation of the living resources of the high seas is such that there is a clear necessity that they be solved, whenever possible, on the basis of international cooperation through the concerted action of all the States concerned,

*Have agreed as follows:*

*Article 1*

1. All States have the right for their nationals to engage in fishing on the high seas, subject (a) to their treaty obligations, (b) to the interests and rights of coastal States as provided for in this Convention, and (c) to the provisions contained in the following articles concerning conservation of the living resources of the high seas.

2. All States have the duty to adopt, or to cooperate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

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\* Came into force on 20 March 1966. United Nations, *Treaty Series*, vol. 559, p. 285.

*Article 2*

As employed in this Convention, the expression "conservation of the living resources of the high seas" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products. Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.

*Article 3*

A State whose nationals are engaged in fishing any stock or stocks of fish or other living marine resources in any area of the high seas where the nationals of other States are not thus engaged shall adopt, for its own nationals, measures in that area when necessary for the purpose of the conservation of the living resources affected.

*Article 4*

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement for their nationals the necessary measures for the conservation of the living resources affected.

2. If the States concerned do not reach agreement within twelve months, any of the parties may initiate the procedure contemplated by article 9.

*Article 5*

1. If, subsequent to the adoption of the measures referred to in articles 3 and 4, nationals of other States engage in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, the other States shall apply the measures, which shall not be discriminatory in form or in fact, to their own nationals not later than seven months after the date on which the measures shall have been notified to the Director-General of the Food and Agriculture Organization of the United Nations. The Director-General shall notify such measures to any State which so requests and, in any case, to any State specified by the State initiating the measure.

2. If these other States do not accept the measures so adopted and if no agreement can be reached within twelve months, any of the interested parties may initiate the procedure contemplated by article 9.

Subject to paragraph 2 of article 10, the measures adopted shall remain obligatory pending the decision of the special commission.

#### *Article 6*

1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.

2. A coastal State is entitled to take part on an equal footing in any system of research and regulation for purposes of conservation of the living resources of the high seas in that area, even though its nationals do not carry on fishing there.

3. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a State shall, at the request of that coastal State, enter into negotiations with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

4. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall not enforce conservation measures in that area which are opposed to those which have been adopted by the coastal State, but may enter into negotiations with the coastal State with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

5. If the States concerned do not reach agreement with respect to conservation measures within twelve months, any of the parties may initiate the procedure contemplated by article 9.

#### *Article 7*

1. Having regard to the provisions of paragraph 1 of article 6, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within six months.

2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:

(a) that there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;

(b) that the measures adopted are based on appropriate scientific findings;

(c) that such measures do not discriminate in form or in fact against foreign fishermen.

3. These measures shall remain in force pending the settlement, in accordance with the relevant provisions of this Convention, of any disagreement as to their validity.

4. If the measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 9. Subject to paragraph 2 of article 10, the measures adopted shall remain obligatory pending the decision of the special commission.

5. The principles of geographical demarcation as defined in article 12 of the Convention on the Territorial Sea and the Contiguous Zone shall be adopted when coasts of different States are involved.

#### *Article 8*

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources of the high seas in that area, may request the State or States whose nationals are engaged in fishing there to take the necessary measures of conservation under articles 3 and 4 respectively, at the same time mentioning the scientific reasons which in its opinion make such measures necessary, and indicating its special interest.

2. If no agreement is reached within twelve months, such State may initiate the procedure contemplated by article 9.

#### *Article 9*

1. Any dispute which may arise between States under articles 4, 5, 6, 7 and 8 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations.

2. The members of the commission, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any State party, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture

Organization of the United Nations, from amongst well-qualified persons being nationals of States not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.

3. Any State party to proceedings under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission, but without the right to vote or to take part in the writing of the commission's decision.

4. The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on this matter.

5. The special commission shall render its decision within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend the time limit for a period not exceeding three months.

6. The special commission shall, in reaching its decisions, adhere to these articles and to any special agreements between the disputing parties regarding settlement of the dispute.

7. Decisions of the commission shall be by majority vote.

#### *Article 10*

1. The special commission shall, in disputes arising under article 7, apply the criteria listed in paragraph 2 of that article. In disputes under articles 4, 5, 6 and 8, the commission shall apply the following criteria, according to the issues involved in the dispute:

(a) common to the determination of disputes arising under articles 4, 5 and 6 are the requirements:

- (i) that scientific findings demonstrate the necessity of conservation measures;
- (ii) that the specific measures are based on scientific findings and are practicable; and
- (iii) that the measures do not discriminate, in form or in fact, against fishermen of other States;

(b) applicable to the determination of disputes arising under article 8 is the requirement that scientific findings demonstrate the neces-

sity for conservation measures, or that the conservation programme is adequate, as the case may be.

2. The special commission may decide that pending its award the measures in dispute shall not be applied, provided that, in the case of disputes under article 7, the measures shall only be suspended when it is apparent to the commission on the basis of *prima facie* evidence that the need for the urgent application of such measures does not exist.

#### *Article 11*

The decisions of the special commission shall be binding on the States concerned and the provisions of paragraph 2 of Article 94 of the Charter of the United Nations shall be applicable to those decisions. If the decisions are accompanied by any recommendations, they shall receive the greatest possible consideration.

#### *Article 12*

1. If the factual basis of the award of the special commission is altered by substantial changes in the conditions of the stock or stocks of fish or other living marine resources or in methods of fishing, any of the States concerned may request the other States to enter into negotiations with a view to prescribing by agreement the necessary modifications in the measures of conservation.

2. If no agreement is reached within a reasonable period of time, any of the States concerned may again resort to the procedure contemplated by article 9 provided that at least two years have elapsed from the original award.

#### *Article 13*

1. The regulation of fisheries conducted by means of equipment embedded in the floor of the sea in areas of the high seas adjacent to the territorial sea of a State may be undertaken by that State where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate in such activities on an equal footing with nationals except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals. Such regulations will not, however, affect the general status of the areas as high seas.

2. In this article, the expression "fisheries conducted by means of equipment embedded in the floor of the sea" means those fisheries using gear with supporting members embedded in the sea floor, constructed

on a site and left there to operate permanently or, if removed, restored each season on the same site.

#### *Article 14*

In articles 1, 3, 4, 5, 6 and 8, the term "nationals" means fishing boats or craft of any size having the nationality of the State concerned, according to the law of that State, irrespective of the nationality of the members of their crews.

#### *Article 15*

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

#### *Article 16*

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### *Article 17*

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 15. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### *Article 18*

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### *Article 19*

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 6, 7, 9, 10, 11 and 12.

2. Any contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

*Article 20*

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any contracting party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

*Article 21*

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 15:

(a) of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 15, 16 and 17;

(b) of the date on which this Convention will come into force, in accordance with article 18;

(c) of requests for revision in accordance with article 20;

(d) of reservations to this Convention, in accordance with article 19.

*Article 22*

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 15.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

(d) CONVENTION ON THE CONTINENTAL SHELF.  
DONE AT GENEVA, ON 29 APRIL 1958\*

*The States Parties to this Convention*

*Have agreed as follows:*

*Article 1*

For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

*Article 2*

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

*Article 3*

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

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\* Came into force on 10 June 1964. United Nations, *Treaty Series*, vol. 499, p. 311.

*Article 4*

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

*Article 5*

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to

purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

#### *Article 6*

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

#### *Article 7*

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.

#### *Article 8*

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

*Article 9*

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article 10*

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 8. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 11*

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article 12*

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3 inclusive.

2. Any Contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

*Article 13*

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

*Article 14*

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 8:

- (a) of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 8, 9 and 10;
- (b) of the date on which this Convention will come into force, in accordance with article 11;
- (c) of requests for revision, in accordance with article 13;
- (d) of reservations to this Convention, in accordance with article 12.

*Article 15*

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 8.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

- (e) OPTIONAL PROTOCOL OF SIGNATURE CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES.

DONE AT GENEVA, ON 29 APRIL 1958\*

*The States Parties to this Protocol* and to any one or more of the Conventions on the Law of the Sea adopted by the United Nations Conference on the Law of the Sea held at Geneva from 24 February to 27 April 1958,

*Expressing their wish* to resort, in all matters concerning them in respect of any dispute arising out of the interpretation or application of any article of any Convention on the Law of the Sea of 29 April 1958, to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement is provided in the Convention or has been agreed upon by the parties within a reasonable period,

*Have agreed* as follows:

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\* Came into force on 30 September 1962. United Nations, *Treaty Series*, vol. 450, p. 169.

*Article I*

Disputes arising out of the interpretation or application of any Convention on the Law of the Sea shall lie within the compulsory jurisdiction of the International Court of Justice, and may accordingly be brought before the Court by an application made by any party to the dispute being Party to this Protocol.

*Article II*

This undertaking relates to all the provisions of any Convention on the Law of the Sea except, in the Convention on Fishing and Conservation of the Living Resources of the High Seas, articles 4, 5, 6, 7 and 8, to which articles 9, 10, 11 and 12 of that Convention remain applicable.

*Article III*

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either Party to this Protocol may bring the dispute before the Court by an application.

*Article IV*

1. Within the same period of two months, the Parties to this Protocol may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

*Article V*

This Protocol shall remain open for signature by all States who become Parties to any Convention on the Law of the Sea adopted by the United Nations Conference on the Law of the Sea and is subject to ratification where necessary, according to the constitutional requirements of the signatory States.

*Article VI*

The Secretary-General of the United Nations shall inform all States who become Parties to any Convention on the Law of the Sea of signa-

tures to this Protocol and of the deposit of instruments of ratification in accordance with article V.

### *Article VII*

The original of this Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article V.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

## 2. CONVENTION ON THE REDUCTION OF STATELESSNESS

### CONVENTION ON THE REDUCTION OF STATELESSNESS.

DONE AT NEW YORK, ON 30 AUGUST 1961\*

*The Contracting States,*

*Acting in pursuance of resolution 896 (IX), adopted by the General Assembly of the United Nations on 4 December 1954,*

*Considering it desirable to reduce statelessness by international agreement,*

*Have agreed as follows:*

### *Article I*

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

\* Came into force on 13 December 1975. United Nations, *Treaty Series*, vol. 989, p. 175.

2. A Contracting State may make the grant of its nationality in accordance with subparagraph (b) of paragraph 1 of this article subject to one or more of the following conditions:

(a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;

(c) that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;

(d) that the person concerned has always been stateless.

3. Notwithstanding the provisions of paragraphs 1 (b) and 2 of this article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4. A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he had passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this article, such application shall not be refused.

5. The Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;

- (b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;
- (c) that the person concerned has always been stateless.

#### *Article 2*

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

#### *Article 3*

For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.

#### *Article 4*

1. A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. Nationality granted in accordance with the provisions of this paragraph shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

2. A Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 1 of this article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the

lodging of the application, not exceeding three years, as may be fixed by that State;

- (c) that the person concerned has not been convicted of an offence against national security;
- (d) that the person concerned has always been stateless.

#### *Article 5*

1. If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.

2. If, under the law of a Contracting State, a child born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such application shall not be more rigorous than those laid down in paragraph 2 of article 1 of this Convention.

#### *Article 6*

If the law of a Contracting State provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.

#### *Article 7*

1. (a) If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.

(b) The provisions of subparagraph (a) of this paragraph shall not apply where their application would be inconsistent with the principles stated in articles 13 and 14 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations.

2. A national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.

3. Subject to the provisions of paragraphs 4 and 5 of this article, a national of a Contracting State shall not lose his nationality, so as to

become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.

4. A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

5. In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.

6. Except in the circumstances mentioned in this article, a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this Convention.

#### *Article 8*

1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph I of this article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;

(b) where the nationality has been obtained by misrepresentation or fraud.

3. Notwithstanding the provisions of paragraph 1 of this article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

(a) that, inconsistently with his duty of loyalty to the Contracting State, the person

(i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

#### *Article 9*

A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

#### *Article 10*

1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.

2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

#### *Article 11*

The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.

#### *Article 12*

1. In relation to a Contracting State which does not, in accordance with the provisions of paragraph 1 of article 1 or of article 4 of this Convention, grant its nationality at birth by operation of law, the provisions of paragraph 1 of article 1 or of article 4, as the case may be, shall apply to persons born before as well as to persons born after the entry into force of this Convention.

2. The provisions of paragraph 4 of article 1 of this Convention shall apply to persons born before as well as to persons born after its entry into force.

3. The provisions of article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State after the entry into force of the Convention for that State.

#### *Article 13*

This Convention shall not be construed as affecting any provisions more conducive to the reduction of statelessness which may be contained in the law of any Contracting State now or hereafter in force, or may be contained in any other convention, treaty or agreement now or hereafter in force between two or more Contracting States.

#### *Article 14*

Any dispute between Contracting States concerning the interpretation or application of this Convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

#### *Article 15*

1. This Convention shall apply in all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Contracting State is responsible; the Contracting State concerned shall, subject to the provisions of paragraph 2 of this article, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which the Convention shall apply ipso facto as a result of such signature, ratification or accession.

2. In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Contracting State or of the non-metropolitan territory for the application of the Convention to that territory, that Contracting State shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by that Contracting State, and when such consent has been obtained the Contracting State shall notify the Secretary-General of the United Nations. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve-month period mentioned in paragraph 2 of this article, the Contracting States concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.

#### *Article 16*

1. This Convention shall be open for signature at the Headquarters of the United Nations from 30 August 1961 to 31 May 1962.

2. This Convention shall be open for signature on behalf of:

(a) any State Member of the United Nations;

(b) any other State invited to attend the United Nations Conference on the Elimination or Reduction of Future Statelessness;

(c) any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. This Convention shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### *Article 17*

1. At the time of signature, ratification or accession any State may make a reservation in respect of articles 11, 14 or 15.

2. No other reservations to this Convention shall be admissible.

#### *Article 18*

1. This Convention shall enter into force two years after the date of the deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the sixth instrument of ratification or accession, it shall enter into force on the ninetieth day after the deposit by such State of its instrument of ratification or accession or on the date on which this Convention enters into force in accordance with the provisions of paragraph 1 of this article, whichever is the later.

*Article 19*

1. Any Contracting State may denounce this Convention at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the Contracting State concerned one year after the date of its receipt by the Secretary-General.

2. In cases where, in accordance with the provisions of article 15, this Convention has become applicable to a non-metropolitan territory of a Contracting State, that State may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United Nations denouncing this Convention separately in respect of that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Contracting States of such notice and the date of receipt thereof.

*Article 20*

1. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 16 of the following particulars:

- (a) signatures, ratifications and accessions under article 16;
- (b) reservations under article 17;
- (c) the date upon which this Convention enters into force in pursuance of article 18;
- (d) denunciations under article 19.

2. The Secretary-General of the United Nations shall, after the deposit of the sixth instrument of ratification or accession at the latest, bring to the attention of the General Assembly the question of the establishment, in accordance with article 11, of such a body as therein mentioned.

*Article 21*

This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Convention.

DONE at New York, this thirtieth day of August, one thousand nine hundred and sixty-one, in a single copy, of which the Chinese, English, French, Russian and Spanish texts are equally authentic and which shall be deposited in the archives of the United Nations, and

certified copies of which shall be delivered by the Secretary-General of the United Nations to all Members of the United Nations and to the non-member States referred to in article 16 of this Convention.

### 3. VIENNA CONVENTION ON DIPLOMATIC RELATIONS AND OPTIONAL PROTOCOLS

#### (a) VIENNA CONVENTION ON DIPLOMATIC RELATIONS. DONE AT VIENNA, ON 18 APRIL 1961\*

*The States Parties to the present Convention,*

*Recalling* that peoples of all nations from ancient times have recognized the status of diplomatic agents,

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

*Believing* that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

*Realizing* that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

*Affirming* that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

*Have agreed* as follows:

#### *Article I*

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

(a) the "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;

(b) the "members of the mission" are the head of the mission and the members of the staff of the mission;

(c) the "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

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\* Came into force on 24 April 1964. United Nations, *Treaty Series*, vol. 500, p. 95.

- (d) the "members of the diplomatic staff" are the members of the staff of the mission having diplomatic rank;
- (e) a "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission;
- (f) the "members of the administrative and technical staff" are the members of the staff of the mission employed in the administrative and technical service of the mission;
- (g) the "members of the service staff" are the members of the staff of the mission in the domestic service of the mission;
- (h) a "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;
- (i) the "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

### *Article 2*

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

### *Article 3*

1. The functions of a diplomatic mission consist, *inter alia*, in:
  - (a) representing the sending State in the receiving State;
  - (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
  - (c) negotiating with the Government of the receiving State;
  - (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
  - (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.
2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

*Article 4*

1. The sending State must make certain that the *agrément* of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.
2. The receiving State is not obliged to give reasons to the sending State for a refusal of *agrément*.

*Article 5*

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.
2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a *chargé d'affaires ad interim* in each State where the head of mission has not his permanent seat.
3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

*Article 6*

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

*Article 7*

Subject to the provisions of articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval.

*Article 8*

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.
2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

*Article 9*

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the mission.

*Article 10*

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:

(a) the appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;

(b) the arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;

(c) the arrival and final departure of private servants in the employ of persons referred to in subparagraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;

(d) the engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

2. Where possible, prior notification of arrival and final departure shall also be given.

*Article 11*

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2. The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

#### *Article 12*

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

#### *Article 13*

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.

2. The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

#### *Article 14*

1. Heads of mission are divided into three classes, namely:

(a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;

(b) that of envoys, ministers and internuncios accredited to Heads of State;

(c) that of chargés d'affaires accredited to Ministers for Foreign Affairs.

2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

#### *Article 15*

The class to which the heads of their missions are to be assigned shall be agreed between States.

#### *Article 16*

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with article 13.

2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.

3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

#### *Article 17*

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

#### *Article 18*

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

#### *Article 19*

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions a chargé d'affaires ad interim shall act provisionally as head of the mission. The name of the chargé d'affaires ad interim shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

#### *Article 20*

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

#### *Article 21*

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

*Article 22*

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

*Article 23*

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

*Article 24*

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

*Article 25*

The receiving State shall accord full facilities for the performance of the functions of the mission.

*Article 26*

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

*Article 27*

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.
2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.
3. The diplomatic bag shall not be opened or detained.
4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.
5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

*Article 28*

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

*Article 29*

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

*Article 30*

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability.

*Article 31*

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
  - (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
  - (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
  - (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
2. A diplomatic agent is not obliged to give evidence as a witness.
3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

*Article 32*

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.
2. Waiver must always be express.
3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.
4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immu-

nity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

#### *Article 33*

1. Subject to the provisions of paragraph 3 of this article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:

(a) that they are not nationals of or permanently resident in the receiving State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multi-lateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

#### *Article 34*

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of article 39;

(d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 23.

#### *Article 35*

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

#### *Article 36*

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the mission;
  - (b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.
2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

#### *Article 37*

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

#### *Article 38*

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

#### *Article 39*

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to

which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

#### *Article 40*

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit, the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

*Article 41*

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

*Article 42*

A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

*Article 43*

The function of a diplomatic agent comes to an end, *inter alia*:

(a) on notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;

(b) on notification by the receiving State to the sending State that, in accordance with paragraph 2 of article 9, it refuses to recognize the diplomatic agent as a member of the mission.

*Article 44*

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

*Article 45*

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

(a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;

(b) the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;

(c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

#### *Article 46*

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

#### *Article 47*

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;

(b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

#### *Article 48*

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

#### *Article 49*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article 50*

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 51*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article 52*

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in article 48:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with articles 48, 49 and 50;

(b) of the date on which the present Convention will enter into force, in accordance with article 51.

*Article 53*

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in article 48.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna this eighteenth day of April one thousand nine hundred and sixty-one.

(b) OPTIONAL PROTOCOL CONCERNING ACQUISITION OF NATIONALITY. DONE AT VIENNA, ON 18 APRIL 1961\*

*The States Parties to the present Protocol and to the Vienna Convention on Diplomatic Relations*, hereinafter referred to as “the Convention,” adopted by the United Nations Conference held at Vienna from 2 March to 14 April 1961,

*Expressing their wish* to establish rules between them concerning acquisition of nationality by the members of their diplomatic missions and of the families forming part of the household of those members,

*Have agreed* as follows:

*Article I*

For the purpose of the present Protocol, the expression “members of the mission” shall have the meaning assigned to it in article 1, subparagraph (b), of the Convention, namely “the head of the mission and the members of the staff of the mission.”

*Article II*

Members of the mission not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

*Article III*

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

*Article IV*

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article V*

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of

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\* Came into force on 24 April 1964. United Nations, *Treaty Series*, vol. 500, p. 223.

accession shall be deposited with the Secretary-General of the United Nations.

#### *Article VI*

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### *Article VII*

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with articles III, IV and V;

(b) of the date on which the present Protocol will enter into force, in accordance with article VI.

#### *Article VIII*

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article III.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

DONE at Vienna this eighteenth day of April one thousand nine hundred and sixty-one.

(c) OPTIONAL PROTOCOL CONCERNING THE COMPULSORY  
SETTLEMENT OF DISPUTES. DONE AT VIENNA,  
ON 18 APRIL 1961\*

*The States Parties to the present Protocol and to the Vienna Convention on Diplomatic Relations*, hereinafter referred to as “the Convention,” adopted by the United Nations Conference held at Vienna from 2 March to 14 April 1961,

Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period,

Have agreed as follows:

*Article I*

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

*Article II*

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

*Article III*

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

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\* Came into force on 24 April 1964. United Nations, *Treaty Series*, vol. 500, p. 241.

*Article IV*

States Parties to the Convention, to the Optional Protocol concerning Acquisition of Nationality, and to the present Protocol may at any time declare that they will extend the provisions of the present Protocol to disputes arising out of the interpretation or application of the Optional Protocol concerning Acquisition of Nationality. Such declarations shall be notified to the Secretary-General of the United Nations.

*Article V*

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

*Article VI*

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article VII*

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article VIII*

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever day is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article IX*

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

- (a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with articles V, VI and VII;
- (b) of declarations made in accordance with article IV of the present Protocol;
- (c) of the date on which the present Protocol will enter into force, in accordance with article VIII.

*Article X*

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article V.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

DONE at Vienna this eighteenth day of April one thousand nine hundred and sixty-one.

4. VIENNA CONVENTION ON CONSULAR RELATIONS AND OPTIONAL PROTOCOLS

- (a) VIENNA CONVENTION ON CONSULAR RELATIONS.  
DONE AT VIENNA, ON 24 APRIL 1963\*

*The States Parties to the present Convention,*

*Recalling that consular relations have been established between peoples since ancient times,*

*Having in mind the Purposes and Principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,*

*Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations which was opened for signature on 18 April 1961,*

*Believing that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,*

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\* Came into force on 19 March 1967. United Nations, *Treaty Series*, vol. 596, p. 261.

*Realizing* that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,

*Affirming* that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,

*Have agreed* as follows:

#### *Article 1. Definitions*

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

(a) "consular post" means any consulate-general, consulate, vice-consulate or consular agency;

(b) "consular district" means the area assigned to a consular post for the exercise of consular functions;

(c) "head of consular post" means the person charged with the duty of acting in that capacity;

(d) "consular officer" means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;

(e) "consular employee" means any person employed in the administrative or technical service of a consular post;

(f) "member of the service staff" means any person employed in the domestic service of a consular post;

(g) "members of the consular post" means consular officers, consular employees and members of the service staff;

(h) "members of the consular staff" means consular officers, other than the head of a consular post, consular employees and members of the service staff;

(i) "member of the private staff" means a person who is employed exclusively in the private service of a member of the consular post;

(j) "consular premises" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;

(k) "consular archives" includes 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 safe keeping.

2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of

the present Convention apply to consular posts headed by career consular officers, the provisions of Chapter III govern consular posts headed by honorary consular officers.

3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by article 71 of the present Convention.

## CHAPTER I. CONSULAR RELATIONS IN GENERAL

### Section I. Establishment and conduct of consular relations

#### *Article 2. Establishment of consular relations*

1. The establishment of consular relations between States takes place by mutual consent.

2. The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations.

3. The severance of diplomatic relations shall not *ipso facto* involve the severance of consular relations.

#### *Article 3. Exercise of consular functions*

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

#### *Article 4. Establishment of a consular post*

1. A consular post may be established in the territory of the receiving State only with that State's consent.

2. The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State.

3. Subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State.

4. The consent of the receiving State shall also be required if a consulate-general or a consulate desires to open a vice-consulate or a consular agency in a locality other than that in which it is itself established.

5. The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consular post elsewhere than at the seat thereof.

*Article 5. Consular functions*

Consular functions consist in:

(a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;

(b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;

(c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;

(d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;

(e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

(f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;

(g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending States in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;

(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;

(i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;

(j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of

the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

(l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the sending State;

(m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

*Article 6. Exercise of consular functions  
outside the consular district*

A consular officer may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district.

*Article 7. Exercise of consular functions in a third State*

The sending State may, after notifying the States concerned, entrust a consular post established in a particular State with the exercise of consular functions in another State, unless there is express objection by one of the States concerned.

*Article 8. Exercise of consular functions  
on behalf of a third State*

Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.

*Article 9. Classes of heads of consular posts*

1. Heads of consular posts are divided into four classes, namely

- (a) consuls-general;
- (b) consuls;
- (c) vice-consuls;
- (d) consular agents.

2. Paragraph 1 of this article in no way restricts the right of any of the Contracting Parties to fix the designation of consular officers other than the heads of consular posts.

*Article 10. Appointment and admission of heads  
of consular posts*

1. Heads of consular posts are appointed by the sending State and are admitted to the exercise of their functions by the receiving State.

2. Subject to the provisions of the present Convention, the formalities for the appointment and for the admission of the head of a consular post are determined by the laws, regulations and usages of the sending State and of the receiving State respectively.

*Article 11. The consular commission or notification  
of appointment*

1. The head of a consular post shall be provided by the sending State with a document, in the form of a commission or similar instrument, made out for each appointment, certifying his capacity and showing, as a general rule, his full name, his category and class, the consular district and the seat of the consular post.

2. The sending State shall transmit the commission or similar instrument through the diplomatic or other appropriate channel to the Government of the State in whose territory the head of a consular post is to exercise his functions.

3. If the receiving State agrees, the sending State may, instead of a commission or similar instrument, send to the receiving State a notification containing the particulars required by paragraph 1 of this article.

*Article 12. The exequatur*

1. The head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State termed an *exequatur*, whatever the form of this authorization.

2. A State which refused to grant an *exequatur* is not obliged to give to the sending State reasons for such refusal.

3. Subject to the provisions of articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an *exequatur*.

*Article 13. Provisional admission of heads of consular posts*

Pending delivery of the *exequatur*, the head of a consular post may be admitted on a provisional basis to the exercise of his functions. In that case, the provisions of the present Convention shall apply.

*Article 14. Notification to the authorities  
of the consular district*

As soon as the head of a consular post is admitted even provisionally to the exercise of his functions, the receiving State shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of a consular post to carry out the duties of his office and to have the benefit of the provisions of the present Convention.

*Article 15. Temporary exercise of the functions of the  
head of a consular post*

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.

2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.

3. The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4. When, in the circumstances referred to in paragraph 1 of this article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

*Article 16. Precedence as between heads of consular posts*

1. Heads of consular posts shall rank in each class according to the date of the grant of the *exequatur*.

2. If, however, the head of a consular post before obtaining the *exequatur* is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the provisional admission; this precedence shall be maintained after the granting of the *exequatur*.

3. The order of precedence as between two or more heads of consular posts who obtained the *exequatur* or provisional admission on the same date shall be determined according to the dates on which their commissions or similar instruments or the notifications referred to in paragraph 3 of article 11 were presented to the receiving State.

4. Acting heads of posts shall rank after all heads of consular posts and, as between themselves, they shall rank according to the dates on which they assumed their functions as acting heads of posts as indicated in the notifications given under paragraph 2 of article 15.

5. Honorary consular officers who are heads of consular posts shall rank in each class after career heads of consular posts, in the order and according to the rules laid down in the foregoing paragraphs.

6. Heads of consular posts shall have precedence over consular officers not having that status.

*Article 17. Performance of diplomatic acts by consular officers*

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in

respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

*Article 18. Appointment of the same person by two or more States  
as a consular officer*

Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.

*Article 19. Appointment of members of consular staff*

1. Subject to the provisions of articles 20, 22 and 23, the sending State may freely appoint the members of the consular staff.

2. The full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of article 23.

3. The sending State may, if required by its laws and regulations, request the receiving State to grant an *exequatur* to a consular officer other than the head of a consular post.

4. The receiving State may, if required by its laws and regulations, grant an *exequatur* to a consular officer other than the head of a consular post.

*Article 20. Size of the consular staff*

In the absence of an express agreement as to the size of the consular staff, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the consular district and to the needs of the particular post.

*Article 21. Precedence as between consular officers  
of a consular post*

The order of precedence as between the consular officers of a consular post and any change thereof shall be notified by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

*Article 22. Nationality of consular officers*

1. Consular officers should, in principle, have the nationality of the sending State.
2. Consular officers may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

*Article 23. Persons declared "non grata"*

1. The receiving State may at any time notify the sending State that a consular officer is *persona non grata* or that any other member of the consular staff is not acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his functions with the consular post.
2. If the sending State refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this article, the receiving State may, as the case may be, either withdraw the *exequatur* from the person concerned or cease to consider him as a member of the consular staff.
3. A person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post. In any such case, the sending State shall withdraw his appointment.
4. In the cases mentioned in paragraphs 1 and 3 of this article, the receiving State is not obliged to give to the sending State reasons for its decision.

*Article 24. Notification to the receiving State of appointments, arrivals and departures*

1. The Ministry for Foreign Affairs of the receiving State or the authority designated by that Ministry shall be notified of:
  - (a) the appointment of members of a consular post, their arrival after appointment to the consular post, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;
  - (b) the arrival and final departure of a person belonging to the family of a member of a consular post forming part of his household

and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;

(c) the arrival and final departure of members of the private staff and, where appropriate, the termination of their service as such;

(d) the engagement and discharge of persons resident in the receiving State as members of a consular post or as members of the private staff entitled to privileges and immunities.

2. When possible, prior notification of arrival and final departure shall also be given.

## Section II. End of consular functions

### *Article 25. Termination of the functions of a member of a consular post*

The functions of a member of a consular post shall come to an end, *inter alia*:

(a) on notification by the sending State to the receiving State that his functions have come to an end;

(b) on withdrawal of the *exequatur*;

(c) on notification by the receiving State to the sending State that the receiving State has ceased to consider him as a member of the consular staff.

### *Article 26. Departure from the territory of the receiving State*

The receiving State shall, even in case of armed conflict, grant to members of the consular post and members of the private staff, other than nationals of the receiving State, and to members of their families forming part of their households irrespective of nationality, the necessary time and facilities to enable them to prepare their departure and to leave at the earliest possible moment after the termination of the functions of the members concerned. In particular, it shall, in case of need, place at their disposal the necessary means of transport for themselves and their property other than property acquired in the receiving State the export of which is prohibited at the time of departure.

### *Article 27. Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances*

1. In the event of the severance of consular relations between two States:

(a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;

(b) the sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;

(c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

2. In the event of the temporary or permanent closure of a consular post, the provisions of subparagraph (a) of paragraph 1 of this article shall apply. In addition,

(a) if the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or

(b) if the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of subparagraphs (b) and (c) of paragraph 1 of this article shall apply.

## CHAPTER II. FACILITIES, PRIVILEGES AND IMMUNITIES

### RELATING TO CONSULAR POSTS, CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

#### Section I. Facilities, privileges and immunities relating to a consular post

##### *Article 28. Facilities for the work of the consular post*

The receiving State shall accord full facilities for the performance of the functions of the consular post.

##### *Article 29. Use of national flag and coat-of-arms*

1. The sending State shall have the right to the use of its national flag and coat-of-arms in the receiving State in accordance with the provisions of this article.

2. The national flag of the sending State may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.

3. In the exercise of the right accorded by this article regard shall be had to the laws, regulations and usages of the receiving State.

*Article 30. Accommodation*

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

*Article 31. Inviolability of the consular premises*

1. Consular premises shall be inviolable to the extent provided in this article.

2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

3. Subject to the provisions of paragraph 2 of this article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

*Article 32. Exemption from taxation of consular premises*

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to paragraph 1 of this article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

*Article 33. Inviolability of the consular archives and documents*

The consular archives and documents shall be inviolable at all times and wherever they may be.

*Article 34. Freedom of movement*

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

*Article 35. Freedom of communication*

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the

consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

*Article 36. Communication and contact with nationals  
of the sending State*

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on

behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

*Article 37. Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents*

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

(a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;

(b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;

(c) if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

*Article 38. Communication with the authorities of the receiving State*

In the exercise of their functions, consular officers may address:

(a) the competent local authorities of their consular district;

(b) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

*Article 39. Consular fees and charges*

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

**Section II. Facilities, privileges and immunities  
relating to career consular officers and  
other members of a consular post**

*Article 40. Protection of consular officers*

The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

*Article 41. Personal inviolability of consular officers*

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2. Except in the case specified in paragraph 1 of this article, consular officers shall not be committed to prison or be liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

*Article 42. Notification of arrest, detention or prosecution*

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

*Article 43. Immunity from jurisdiction*

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the

receiving State in respect of acts performed in the exercise of consular functions.

2. The provisions of paragraph 1 of this article shall not, however, apply in respect of a civil action either:

(a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or

(b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

#### *Article 44. Liability to give evidence*

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

#### *Article 45. Waiver of privileges and immunities*

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in articles 41, 43 and 44.

2. The waiver shall in all cases be express, except as provided in paragraph 3 of this article, and shall be communicated to the receiving State in writing.

3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the

waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

*Article 46. Exemption from registration of aliens and residence permits*

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

2. The provisions of paragraph 1 of this article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

*Article 47. Exemption from work permits*

1. Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.

2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this article.

*Article 48. Social security exemption*

1. Subject to the provisions of paragraph 3 of this article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:

(a) that they are not nationals of or permanently resident in the receiving State; and

(b) that they are covered by the social security provisions which are in force in the sending State or a third State.

3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply

shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

*Article 49. Exemption from taxation*

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of article 32;

(c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of article 51;

(d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of article 32.

2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.

3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

*Article 50. Exemption from customs duties and inspection*

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the consular post;

(b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended

for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in subparagraph (b) of paragraph 1 of this article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

*Article 51. Estate of a member of the consular post  
or of a member of his family*

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

(a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;

(b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

*Article 52. Exemption from personal services  
and contributions*

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

*Article 53. Beginning and end of consular  
privileges and immunities*

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.

2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

*Article 54. Obligations of third States*

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case

of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to *force majeure*.

*Article 55. Respect for the laws and regulations  
of the receiving State*

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of the State.

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. The provisions of paragraph 2 of this article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

*Article 56. Insurance against third party risks*

Members of the consular post shall comply with any requirements imposed by the laws and regulations of the receiving State in respect of

insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

*Article 57. Special provisions concerning  
private gainful occupation*

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.
2. Privileges and immunities provided in this chapter shall not be accorded:
  - (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;
  - (b) to members of the family of a person referred to in subparagraph (a) of this paragraph or to members of his private staff;
  - (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

**CHAPTER III. REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS**

*Article 58. General provisions relating to facilities,  
privileges and immunities*

1. Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of article 54 and paragraphs 2 and 3 of article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by articles 59, 60, 61 and 62.
2. Articles 42 and 43, paragraph 3 of article 44, articles 45 and 53 and paragraph 1 of article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by articles 63, 64, 65, 66 and 67.
3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.
4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

*Article 59. Protection of the consular premises*

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

*Article 60. Exemption from taxation of consular premises*

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

*Article 61. Inviolability of consular archives and documents*

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

*Article 62. Exemption from customs duties*

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

*Article 63. Criminal proceedings*

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or deten-

tion, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

*Article 64. Protection of honorary consular officers*

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

*Article 65. Exemption from registration of aliens  
and residence permits*

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

*Article 66. Exemption from taxation*

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

*Article 67. Exemption from personal services and contributions*

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

*Article 68. Optional character of the institution of  
honorary consular officers*

Each State is free to decide whether it will appoint or receive honorary consular officers.

#### CHAPTER IV. GENERAL PROVISIONS

*Article 69. Consular agents who are not heads  
of consular posts*

1. Each State is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular post by the sending State.

2. The conditions under which the consular agencies referred to in paragraph 1 of this article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending State and the receiving State.

*Article 70. Exercise of consular functions by diplomatic missions*

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

3. In the exercise of consular functions a diplomatic mission may address:

- (a) the local authorities of the consular district;
- (b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.

4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this article shall continue to be governed by the rules of international law concerning diplomatic relations.

*Article 71. Nationals or permanent residents of the receiving State*

1. Except insofar as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privileges provided in paragraph 3 of article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.

2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this article, shall enjoy facilities, privileges and immunities only insofar as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only insofar as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

*Article 72. Non-discrimination*

1. In the application of the provisions of the present Convention the receiving State shall not discriminate as between States.
2. However, discrimination shall not be regarded as taking place:
  - (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its consular posts in the sending State;
  - (b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

*Article 73. Relationship between the present Convention  
and other international agreements*

1. The provisions of the present Convention shall not affect other international agreements in force as between States Parties to them.
2. Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.

CHAPTER V. FINAL PROVISIONS

*Article 74. Signature*

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and

subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

*Article 75. Ratification*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article 76. Accession*

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article 74. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 77. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article 78. Notifications by the Secretary-General*

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in article 74:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with articles 74, 75 and 76;

(b) of the date on which the present Convention will enter into force, in accordance with article 77.

*Article 79. Authentic texts*

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in article 74.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna this twenty-fourth day of April, one thousand nine hundred and sixty-three.

(b) OPTIONAL PROTOCOL CONCERNING ACQUISITION OF NATIONALITY. DONE AT VIENNA, ON 24 APRIL 1963\*

*The States Parties to the present Protocol and to the Vienna Convention on Consular Relations*, hereinafter referred to as “the Convention,” adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

*Expressing their wish* to establish rules between them concerning acquisition of nationality by members of the consular post and by members of their families forming part of their households,

*Have agreed as follows:*

*Article I*

For the purposes of the present Protocol, the expression “members of the consular post” shall have the meaning assigned to it in subparagraph (g) of paragraph 1 of article 1 of the Convention, namely, “consular officers, consular employees and members of the service staff”.

*Article II*

Members of the consular post not being nationals of the receiving State, and members of their families forming part of their households, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

*Article III*

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

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\* Came into force on 19 March 1967. United Nations, *Treaty Series*, vol. 596, p. 469.

*Article IV*

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article V*

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article VI*

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification of or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article VII*

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the Protocol and of the deposit of instruments of ratification or accession, in accordance with articles III, IV and V;

(b) of the date on which the present Protocol will enter into force, in accordance with article VI.

*Article VIII*

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article III.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

DONE at Vienna this twenty-fourth day of April, one thousand nine hundred and sixty-three.

(c) OPTIONAL PROTOCOL CONCERNING THE COMPULSORY  
SETTLEMENT OF DISPUTES. DONE AT VIENNA,  
ON 24 APRIL 1963\*

*The States Parties to the present Protocol and to the Vienna Convention on Consular Relations*, hereinafter referred to as “the Convention,” adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

*Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period.*

*Have agreed as follows:*

### *Article I*

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

### *Article II*

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

### *Article III*

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

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\* Came into force on 19 March 1967. United Nations, *Treaty Series*, vol. 596, p. 487.

*Article IV*

States Parties to the Convention, to the Optional Protocol concerning Acquisition of Nationality, and to the present Protocol may at any time declare that they will extend the provisions of the present Protocol to disputes arising out of the interpretation or application of the Optional Protocol concerning Acquisition of Nationality. Such declarations shall be notified to the Secretary-General of the United Nations.

*Article V*

The present Protocol shall be open for signature by all States which may become Parties to the Convention as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

*Article VI*

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article VII*

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article VIII*

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article IX*

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

- (a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with articles V, VI and VII;
- (b) of declarations made in accordance with article IV of the present Protocol;
- (c) of the date on which the present Protocol will enter into force, in accordance with article VIII.

*Article X*

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article V.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

DONE at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

5. CONVENTION ON SPECIAL MISSIONS AND  
OPTIONAL PROTOCOL

- (a) CONVENTION ON SPECIAL MISSIONS. ADOPTED BY  
THE GENERAL ASSEMBLY OF THE UNITED NATIONS,  
ON 8 DECEMBER 1969\*

*The States Parties to the present Convention,*

Recalling that special treatment has always been accorded to special missions,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security and the development of friendly relations and cooperation among States,

Recalling that the importance of the question of special missions was recognized during the United Nations Conference on Diplomatic Intercourse and Immunities and in resolution I adopted by the Conference on 10 April 1961,

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\* Came into force on 21 June 1985. United Nations, *Treaty Series*, vol. 1400, p. 231.

*Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations, which was opened for signature on 18 April 1961,*

*Considering that the United Nations Conference on Consular Relations adopted the Vienna Convention on Consular Relations, which was opened for signature on 24 April 1963,*

*Believing that an international convention on special missions would complement those two Conventions and would contribute to the development of friendly relations among nations, whatever their constitutional and social systems,*

*Realizing that the purpose of privileges and immunities relating to special missions is not to benefit individuals but to ensure the efficient performance of the functions of special missions as missions representing the State,*

*Affirming that the rules of customary international law continue to govern questions not regulated by the provisions of the present Convention,*

*Have agreed as follows:*

#### *Article 1. Use of terms*

For the purposes of the present Convention:

(a) a "special mission" is a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task;

(b) a "permanent diplomatic mission" is a diplomatic mission within the meaning of the Vienna Convention on Diplomatic Relations;

(c) a "consular post" is any consulate-general, consulate, vice-consulate or consular agency;

(d) the "head of a special mission" is the person charged by the sending State with the duty of acting in that capacity;

(e) a "representative of the sending State in the special mission" is any person on whom the sending State has conferred that capacity;

(f) the "members of a special mission" are the head of the special mission, the representatives of the sending State in the special mission and the members of the staff of the special mission;

(g) the "members of the staff of the special mission" are the members of the diplomatic staff, the administrative and technical staff and the service staff of the special mission;

- (h) the "members of the diplomatic staff" are the members of the staff of the special mission who have diplomatic status for the purposes of the special mission;
- (i) the "members of the administrative and technical staff" are the members of the staff of the special mission employed in the administrative and technical service of the special mission;
- (j) the "members of the service staff" are the members of the staff of the special mission employed by it as household workers or for similar tasks;
- (k) the "private staff" are persons employed exclusively in the private service of the members of the special mission.

*Article 2. Sending of a special mission*

A State may send a special mission to another State with the consent of the latter, previously obtained through the diplomatic or another agreed or mutually acceptable channel.

*Article 3. Functions of a special mission*

The functions of a special mission shall be determined by the mutual consent of the sending and the receiving State.

*Article 4. Sending of the same special mission  
to two or more States*

A State which wishes to send the same special mission to two or more States shall so inform each receiving State when seeking the consent of that State.

*Article 5. Sending of a joint special mission by two  
or more States*

Two or more States which wish to send a joint special mission to another State shall so inform the receiving State when seeking the consent of that State.

*Article 6. Sending of special missions by two  
or more States in order to deal with a question  
of common interest*

Two or more States may each send a special mission at the same time to another State, with the consent of that State obtained in accordance with article 2, in order to deal together, with the agreement of all of these States, with a question of common interest to all of them.

*Article 7. Non-existence of diplomatic or consular relations*

The existence of diplomatic or consular relations is not necessary for the sending or reception of a special mission.

*Article 8. Appointment of the members of the special mission*

Subject to the provisions of articles 10, 11 and 12, the sending State may freely appoint the members of the special mission after having given to the receiving State all necessary information concerning the size and composition of the special mission, and in particular the names and designations of the persons it intends to appoint. The receiving State may decline to accept a special mission of a size that is not considered by it to be reasonable, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission. It may also, without giving reasons, decline to accept any person as a member of the special mission.

*Article 9. Composition of the special mission*

1. A special mission shall consist of one or more representatives of the sending State from among whom the sending State may appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.

2. When members of a permanent diplomatic mission or of a consular post in the receiving State are included in a special mission, they shall retain their privileges and immunities as members of their permanent diplomatic mission or consular post in addition to the privileges and immunities accorded by the present Convention.

*Article 10. Nationality of the members of the special mission*

1. The representatives of the sending State in the special mission and the members of its diplomatic staff should in principle be of the nationality of the sending State.

2. Nationals of the receiving State may not be appointed to a special mission except with the consent of that State, which may be withdrawn at any time.

3. The receiving State may reserve the right provided for in paragraph 2 of this article with regard to nationals of a third State who are not also nationals of the sending State.

*Article 11. Notifications*

1. The Ministry of Foreign Affairs of the receiving State, or such other organ of that State as may be agreed, shall be notified of:

(a) the composition of the special mission and any subsequent changes therein;

(b) the arrival and final departure of members of the mission and the termination of their functions with the mission;

(c) the arrival and final departure of any person accompanying a member of the mission;

(d) the engagement and discharge of persons resident in the receiving State as members of the mission or as private staff;

(e) the appointment of the head of the special mission or, if there is none, of the representative referred to in paragraph 1 of article 14, and of any substitute for them;

(f) the location of the premises occupied by the special mission and of the private accommodation enjoying inviolability under articles 30, 36 and 39, as well as any other information that may be necessary to identify such premises and accommodation.

2. Unless it is impossible, notification of arrival and final departure must be given in advance.

*Article 12. Persons declared "non grata" or not acceptable*

1. The receiving State may, at any time and without having to explain its decision, notify the sending State that any representative of the sending State in the special mission or any member of its diplomatic staff is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses, or fails within a reasonable period, to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the special mission.

*Article 13. Commencement of the functions  
of a special mission*

1. The functions of a special mission shall commence as soon as the mission enters into official contact with the Ministry of Foreign Affairs or with such other organ of the receiving State as may be agreed.

2. The commencement of the functions of a special mission shall not depend upon presentation of the mission by the permanent diplomatic mission of the sending State or upon the submission of letters of credence or full powers.

*Article 14. Authority to act on behalf of the special mission*

1. The head of the special mission or, if the sending State has not appointed a head, one of the representatives of the sending State designated by the latter is authorized to act on behalf of the special mission and to address communications to the receiving State. The receiving State shall address communications concerning the special mission to the head of the mission, or, if there is none, to the representative referred to above, either direct or through the permanent diplomatic mission.

2. However, a member of the special mission may be authorized by the sending State, by the head of the special mission or, if there is none, by the representative referred to in paragraph 1 of this article, either to substitute for the head of the special mission or for the aforesaid representative or to perform particular acts on behalf of the mission.

*Article 15. Organ of the receiving State with which official business is conducted*

All official business with the receiving State entrusted to the special mission by the sending State shall be conducted with or through the Ministry of Foreign Affairs or with such other organ of the receiving State as may be agreed.

*Article 16. Rules concerning precedence*

1. Where two or more special missions meet in the territory of the receiving State or of a third State, precedence among the missions shall be determined, in the absence of a special agreement, according to the alphabetical order of the names of the States used by the protocol of the State in whose territory the missions are meeting.

2. Precedence among two or more special missions which meet on a ceremonial or formal occasion shall be governed by the protocol in force in the receiving State.

3. Precedence among the members of the same special mission shall be that which is notified to the receiving State or to the third State in whose territory two or more special missions are meeting.

*Article 17. Seat of the special mission*

1. A special mission shall have its seat in the locality agreed by the States concerned.
2. In the absence of agreement, the special mission shall have its seat in the locality where the Ministry of Foreign Affairs of the receiving State is situated.
3. If the special mission performs its functions in different localities, the States concerned may agree that it shall have more than one seat from among which they may choose one as the principal seat.

*Article 18. Meeting of special missions in the territory of a third State*

1. Special missions from two or more States may meet in the territory of a third State only after obtaining the express consent of that State, which retains the right to withdraw it.
2. In giving its consent, the third State may lay down conditions which shall be observed by the sending States.
3. The third State shall assume in respect of the sending States the rights and obligations of a receiving State to the extent that it indicates in giving its consent.

*Article 19. Right of the special mission to use the flag and emblem of the sending State*

1. A special mission shall have the right to use the flag and emblem of the sending State on the premises occupied by the mission, and on its means of transport when used on official business.
2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the receiving State.

*Article 20. End of the functions of a special mission*

1. The functions of a special mission shall come to an end, *inter alia*, upon:
  - (a) the agreement of the States concerned;
  - (b) the completion of the task of the special mission;
  - (c) the expiry of the duration assigned for the special mission, unless it is expressly extended;
  - (d) notification by the sending State that it is terminating or recalling the special mission;

(e) notification by the receiving State that it considers the special mission terminated.

2. The severance of diplomatic or consular relations between the sending State and the receiving State shall not of itself have the effect of terminating special missions existing at the time of such severance.

*Article 21. Status of the Head of State and persons of high rank*

1. The Head of the sending State, when he leads a special mission, shall enjoy in the receiving State or in a third State the facilities, privileges and immunities accorded by international law to Heads of State on an official visit.

2. The Head of the Government, the Minister for Foreign Affairs and other persons of high rank, when they take part in a special mission of the sending State, shall enjoy in the receiving State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law.

*Article 22. General facilities*

The receiving State shall accord to the special mission the facilities required for the performance of its functions, having regard to the nature and task of the special mission.

*Article 23. Premises and accommodation*

The receiving State shall assist the special mission, if it so requests, in procuring the necessary premises and obtaining suitable accommodation for its members.

*Article 24. Exemption of the premises of the special mission from taxation*

1. To the extent compatible with the nature and duration of the functions performed by the special mission, the sending State and the members of the special mission acting on behalf of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises occupied by the special mission, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or with a member of the special mission.

*Article 25. Inviolability of the premises*

1. The premises where the special mission is established in accordance with the present Convention shall be inviolable. The agents of the receiving State may not enter the said premises, except with the consent of the head of the special mission or, if appropriate, of the head of the permanent diplomatic mission of the sending State accredited to the receiving State. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of the special mission or, where appropriate, of the head of the permanent mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the special mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the special mission, their furnishings, other property used in the operation of the special mission and its means of transport shall be immune from search, requisition, attachment or execution.

*Article 26. Inviolability of archives and documents*

The archives and documents of the special mission shall be inviolable at all times and wherever they may be. They should, when necessary, bear visible external marks of identification.

*Article 27. Freedom of movement*

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the special mission such freedom of movement and travel in its territory as is necessary for the performance of the functions of the special mission.

*Article 28. Freedom of communication*

1. The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. In communicating with the Government of the sending State, its diplomatic missions, its consular posts and its other special missions or with sections of the same mission, wherever situated, the special mission may employ all appropriate means, including couriers and messages in code or cipher. However, the special mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the special mission shall be inviolable. Official correspondence means all correspondence relating to the special mission and its functions.

3. Where practicable, the special mission shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission of the sending State.

4. The bag of the special mission shall not be opened or detained.

5. The packages constituting the bag of the special mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the special mission.

6. The courier of the special mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

7. The sending State or the special mission may designate couriers *ad hoc* of the special mission. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the special mission's bag in his charge.

8. The bag of the special mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. The captain shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the special mission. By arrangement with the appropriate authorities, the special mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

#### *Article 29. Personal inviolability*

The persons of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be inviolable. They shall not be liable to any form of arrest or detention. The receiving State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

#### *Article 30. Inviolability of the private accommodation*

1. The private accommodation of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall enjoy the same inviolability and protection as the premises of the special mission.

2. Their papers, their correspondence and, except as provided in paragraph 4 of article 31, their property shall likewise enjoy inviolability.

*Article 31. Immunity from jurisdiction*

1. The representatives of the sending State in the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State.

2. They shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the person concerned is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the person concerned in the receiving State outside his official functions;

(d) an action for damages arising out of an accident caused by a vehicle used outside the official functions of the person concerned.

3. The representatives of the sending State in the special mission and the members of its diplomatic staff are not obliged to give evidence as witnesses.

4. No measures of execution may be taken in respect of a representative of the sending State in the special mission or a member of its diplomatic staff except in the cases coming under subparagraphs (a), (b), (c) and (d) of paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person or his accommodation.

5. The immunity from jurisdiction of the representatives of the sending State in the special mission and of the members of its diplomatic staff does not exempt them from the jurisdiction of the sending State.

*Article 32. Exemption from social security legislation*

1. Subject to the provisions of paragraph 3 of this article, representatives of the sending State in the special mission and members of its diplomatic staff shall, in respect of services rendered for the sending State, be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of a representative of the sending State in the special mission or of a member of its diplomatic staff, on condition:

(a) that such employed persons are not nationals of or permanently resident in the receiving State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. Representatives of the sending State in the special mission and members of its diplomatic staff who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State where such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multi-lateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

### *Article 33. Exemption from dues and taxes*

The representatives of the sending State in the special mission and the members of its diplomatic staff shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;

(c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of article 44;

(d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duty, subject to the provisions of article 24.

*Article 34. Exemption from personal services*

The receiving State shall exempt the representatives of the sending State in the special mission and the members of its diplomatic staff from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

*Article 35. Exemption from customs duties and inspection*

1. Within the limits of such laws and regulations as it may adopt, the receiving State shall permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the special mission;

(b) articles for the personal use of the representatives of the sending State in the special mission and the members of its diplomatic staff.

2. The personal baggage of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. In such cases, inspection shall be conducted only in the presence of the person concerned or of his authorized representative.

*Article 36. Administrative and technical staff*

Members of the administrative and technical staff of the special mission shall enjoy the privileges and immunities specified in articles 29 to 34, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 2 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges mentioned in paragraph 1 of article 35 in respect of articles imported at the time of their first entry into the territory of the receiving State.

*Article 37. Service staff*

Members of the service staff of the special mission shall enjoy immunity from the jurisdiction of the receiving State in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment, and exemption from social security legislation as provided in article 32.

*Article 38. Private staff*

Private staff of the members of the special mission shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all other respects, they may enjoy privileges and immunities only to the extent permitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

*Article 39. Members of the family*

1. Members of the families of representatives of the sending State in the special mission and of members of its diplomatic staff shall, if they accompany such members of the special mission, enjoy the privileges and immunities specified in articles 29 to 35 provided that they are not nationals of or permanently resident in the receiving State.

2. Members of the families of members of the administrative and technical staff of the special mission shall, if they accompany such members of the special mission, enjoy the privileges and immunities specified in article 36 provided that they are not nationals of or permanently resident in the receiving State.

*Article 40. Nationals of the receiving State and persons  
permanently resident in the receiving State*

1. Except insofar as additional privileges and immunities may be granted by the receiving State, the representatives of the sending State in the special mission and the members of its diplomatic staff who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of their functions.

2. Other members of the special mission and private staff who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent granted to them by that State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

*Article 41. Waiver of immunity*

1. The sending State may waive the immunity from jurisdiction of its representatives in the special mission, of the members of its diplomatic staff, and of other persons enjoying immunity under articles 36 to 40.

2. Waiver must always be express.
3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.
4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

*Article 42. Transit through the territory of a third State*

1. If a representative of the sending State in the special mission or a member of its diplomatic staff passes through or is in the territory of a third State while proceeding to take up his functions or returning to the sending State, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the person referred to in this paragraph, whether travelling with him or travelling separately to join him or to return to their country.
2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit of members of the administrative and technical or service staff of the special mission, or of members of their families, through their territories.
3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. Subject to the provisions of paragraph 4 of this article, they shall accord to the couriers and bags of the special mission in transit the same inviolability and protection as the receiving State is bound to accord under the present Convention.
4. The third State shall be bound to comply with its obligations in respect of the persons mentioned in paragraphs 1, 2 and 3 of this article only if it has been informed in advance, either in the visa application or by notification, of the transit of those persons as members of the special mission, members of their families or couriers, and has raised no objection to it.
5. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to the official communications and the bags of the special mission, when the use of the territory of the third State is due to *force majeure*.

*Article 43. Duration of privileges and immunities*

1. Every member of the special mission shall enjoy the privileges and immunities to which he is entitled from the moment he enters the territory of the receiving State for the purpose of performing his functions in the special mission or, if he is already in its territory, from the moment when his appointment is notified to the Ministry of Foreign Affairs or such other organ of the receiving State as may be agreed.

2. When the functions of a member of the special mission have come to an end, his privileges and immunities shall normally cease at the moment when he leaves the territory of the receiving State, or on the expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, in respect of acts performed by such a member in the exercise of his functions, immunity shall continue to subsist.

3. In the event of the death of a member of the special mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory of the receiving State.

*Article 44. Property of a member of the special mission  
or of a member of his family in the event of death*

1. In the event of the death of a member of the special mission or of a member of his family accompanying him, if the deceased was not a national of or permanently resident in the receiving State, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death.

2. Estate, succession and inheritance duties shall not be levied on movable property which is in the receiving State solely because of the presence there of the deceased as a member of the special mission or of the family of a member of the mission.

*Article 45. Facilities to leave the territory of the receiving State  
and to remove the archives of the special mission*

1. The receiving State must, even in case of armed conflict, grant facilities to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons, irrespective of their nationality, to leave at the earliest possible moment. In particular it must, in case of need, place at their disposal the necessary means of transport for themselves and their property.

2. The receiving State must grant the sending State facilities for removing the archives of the special mission from the territory of the receiving State.

*Article 46. Consequences of the cessation of the functions of the special mission*

1. When the functions of a special mission come to an end, the receiving State must respect and protect the premises of the special mission so long as they are assigned to it, as well as the property and archives of the special mission. The sending State must withdraw the property and archives within a reasonable period of time.

2. In case of the absence or severance of diplomatic or consular relations between the sending State and the receiving State and if the functions of the special mission have come to an end, the sending State may, even if there is an armed conflict, entrust the custody of the property and archives of the special mission to a third State acceptable to the receiving State.

*Article 47. Respect for the laws and regulations of the receiving State and use of the premises of the special mission*

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying those privileges and immunities under the present Convention to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. The premises of the special mission must not be used in any manner incompatible with the functions of the special mission as envisaged in the present Convention, in other rules of general international law or in any special agreements in force between the sending and the receiving State.

*Article 48. Professional or commercial activity*

The representatives of the sending State in the special mission and the members of its diplomatic staff shall not practise for personal profit any professional or commercial activity in the receiving State.

*Article 49. Non-discrimination*

1. In the application of the provisions of the present Convention, no discrimination shall be made as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its special mission in the sending State;

(b) where States modify among themselves, by custom or agreement, the extent of facilities, privileges and immunities for their special missions, although such a modification has not been agreed with other States, provided that it is not incompatible with the object and purpose of the present Convention and does not affect the enjoyment of the rights or the performance of the obligations of third States.

#### *Article 50. Signature*

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, until 31 December 1970 at United Nations Headquarters in New York.

#### *Article 51. Ratification*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### *Article 52. Accession*

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 50. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### *Article 53. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article 54. Notifications by the depositary*

The Secretary-General of the United Nations shall inform all States belonging to any of the categories mentioned in article 50:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession in accordance with articles 50, 51 and 52;

(b) of the date on which the present Convention will enter into force in accordance with article 53.

*Article 55. Authentic texts*

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the categories mentioned in article 50.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention, opened for signature at New York on 16 December 1969.

(b) OPTIONAL PROTOCOL CONCERNING THE COMPULSORY  
SETTLEMENT OF DISPUTES. ADOPTED BY THE  
GENERAL ASSEMBLY OF THE UNITED NATIONS,  
ON 8 DECEMBER 1969\*

*The States Parties to the present Protocol and to the Convention on Special Missions*, hereinafter referred to as “the Convention,” adopted by the General Assembly of the United Nations on 8 December 1969,

*Expressing their wish to resort, in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention, to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period of time,*

*Have agreed follows:*

*Article I*

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by a

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\* Came into force on 21 June 1985. United Nations, *Treaty Series*, vol. 1400, p. 339.

written application made by any party to the dispute being a Party to the present Protocol.

#### *Article II*

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by a written application.

#### *Article III*

1. Within the said period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by a written application.

#### *Article IV*

The present Protocol shall be open for signature by all States which may become Parties to the Convention, until 31 December 1970 at United Nations Headquarters in New York.

#### *Article V*

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### *Article VI*

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### *Article VII*

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of

the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever day is later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### *Article VIII*

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession in accordance with articles IV, V and VI;

(b) of the date on which the present Protocol will enter into force in accordance with article VII.

#### *Article IX*

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article IV.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Protocol, opened for signature at New York on 16 December 1969.

### 6. VIENNA CONVENTION ON THE LAW OF TREATIES

VIENNA CONVENTION ON THE LAW OF TREATIES.  
DONE AT VIENNA, ON 23 MAY 1969\*

*The States Parties to the present Convention,*

*Considering the fundamental role of treaties in the history of international relations,*

*Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful cooperation among nations, whatever their constitutional and social systems,*

*Noting that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized,*

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\* Came into force on 27 January 1980. United Nations, *Treaty Series*, vol. 1155, p. 331.

*Affirming* that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

*Recalling* the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Believing* that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of cooperation among nations,

*Affirming* that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

*Have agreed as follows:*

## PART I. INTRODUCTION

### *Article 1. Scope of the present Convention*

The present Convention applies to treaties between States.

### *Article 2. Use of terms*

#### 1. For the purposes of the present Convention:

(a) “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) “ratification,” “acceptance,” “approval” and “accession” mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(c) “full powers” means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for

expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(d) "reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(e) "negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;

(f) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(g) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(h) "third State" means a State not a party to the treaty;

(i) "international organization" means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

### *Article 3. International agreements not within the scope of the present Convention*

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

(a) the legal force of such agreements;

(b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

(c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

### *Article 4. Non-retroactivity of the present Convention*

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

*Article 5. Treaties constituting international organizations and treaties adopted within an international organization*

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

PART II. CONCLUSION AND ENTRY INTO FORCE OF TREATIES

Section 1. Conclusion of treaties

*Article 6. Capacity of States to conclude treaties*

Every State possesses capacity to conclude treaties.

*Article 7. Full powers*

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(a) he produces appropriate full powers; or

(b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

(c) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

*Article 8. Subsequent confirmation of an act performed without authorization*

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a

State for that purpose is without legal effect unless afterwards confirmed by that State.

*Article 9. Adoption of the text*

1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

*Article 10. Authentication of the text*

The text of a treaty is established as authentic and definitive:

(a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or

(b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

*Article 11. Means of expressing consent to be bound by a treaty*

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

*Article 12. Consent to be bound by a treaty  
expressed by signature*

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:

(a) the treaty provides that signature shall have that effect;

(b) it is otherwise established that the negotiating States were agreed that signature should have that effect; or

(c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

(a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;

(b) the signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

*Article 13. Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty*

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

- (a) the instruments provide that their exchange shall have that effect; or
- (b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

*Article 14. Consent to be bound by a treaty expressed by ratification, acceptance or approval*

1. The consent of a State to be bound by a treaty is expressed by ratification when:

- (a) the treaty provides for such consent to be expressed by means of ratification;
- (b) it is otherwise established that the negotiating States were agreed that ratification should be required;
- (c) the representative of the State has signed the treaty subject to ratification; or
- (d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

*Article 15. Consent to be bound by a treaty expressed by accession*

The consent of a State to be bound by a treaty is expressed by accession when:

- (a) the treaty provides that such consent may be expressed by that State by means of accession;
- (b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or
- (c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

*Article 16. Exchange or deposit of instruments of ratification, acceptance, approval or accession*

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

- (a) their exchange between the contracting States;
- (b) their deposit with the depositary; or
- (c) their notification to the contracting States or to the depositary, if so agreed.

*Article 17. Consent to be bound by part of a treaty and choice of differing provisions*

1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

*Article 18. Obligation not to defeat the object and purpose of a treaty prior to its entry into force*

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

- (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
- (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

## Section 2. Reservations

*Article 19. Formulation of reservations*

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

- (a) the reservation is prohibited by the treaty;
- (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

- (c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

*Article 20. Acceptance of and objection to reservations*

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

(b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

*Article 21. Legal effects of reservations and of objections to reservations*

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

*Article 22. Withdrawal of reservations and of objections to reservations*

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

*Article 23. Procedure regarding reservations*

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

Section 3. Entry into force and provisional application of treaties

*Article 24. Entry into force*

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.
3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.
4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

*Article 25. Provisional application*

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:
  - (a) the treaty itself so provides; or
  - (b) the negotiating States have in some other manner so agreed.
2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

PART III. OBSERVANCE, APPLICATION AND  
INTERPRETATION OF TREATIES

Section 1. Observance of treaties

*Article 26. “Pacta sunt servanda”*

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

*Article 27. Internal law and observance of treaties*

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

## Section 2. Application of treaties

### *Article 28. Non-retroactivity of treaties*

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

### *Article 29. Territorial scope of treaties*

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

### *Article 30. Application of successive treaties relating to the same subject matter*

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States Parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(a) as between States Parties to both treaties the same rule applies as in paragraph 3;

(b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

### Section 3. Interpretation of treaties

#### *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 connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection 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.

#### *Article 33. Interpretation of treaties authenticated in two or more languages*

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

#### Section 4. Treaties and third States

##### *Article 34. General rule regarding third States*

A treaty does not create either obligations or rights for a third State without its consent.

##### *Article 35. Treaties providing for obligations for third States*

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

##### *Article 36. Treaties providing for rights for third States*

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

##### *Article 37. Revocation or modification of obligations or rights of third States*

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is

established that the right was intended not to be revocable or subject to modification without the consent of the third State.

*Article 38. Rules in a treaty becoming binding on third States through international custom*

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

PART IV. AMENDMENT AND MODIFICATION OF TREATIES

*Article 39. General rule regarding the amendment of treaties*

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide.

*Article 40. Amendment of multilateral treaties*

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:

(a) the decision as to the action to be taken in regard to such proposal;

(b) the negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (b), applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

(a) be considered as a party to the treaty as amended; and

(b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

*Article 41. Agreements to modify multilateral treaties between certain of the parties only*

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

(a) the possibility of such a modification is provided for by the treaty; or

(b) the modification in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

PART V. INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

Section 1. General provisions

*Article 42. Validity and continuance in force of treaties*

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

*Article 43. Obligations imposed by international law independently of a treaty*

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

*Article 44. Separability of treaty provisions*

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

(a) the said clauses are separable from the remainder of the treaty with regard to their application;

(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(c) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50, the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

*Article 45. Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty*

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

## Section 2. Invalidity of treaties

### *Article 46. Provisions of internal law regarding competence to conclude treaties*

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

### *Article 47. Specific restrictions on authority to express the consent of a State*

If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

### *Article 48. Error*

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

### *Article 49. Fraud*

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

*Article 50. Corruption of a representative of a State*

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

*Article 51. Coercion of a representative of a State*

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

*Article 52. Coercion of a State by the threat or use of force*

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

*Article 53. Treaties conflicting with a peremptory norm of general international law ("jus cogens")*

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

### Section 3. Termination and suspension of the operation of treaties

*Article 54. Termination of or withdrawal from a treaty under its provisions or by consent of the parties*

The termination of a treaty or the withdrawal of a party may take place:

- (a) in conformity with the provisions of the treaty; or
- (b) at any time by consent of all the parties after consultation with the other contracting States.

*Article 55. Reduction of the parties to a multilateral treaty below the number necessary for its entry into force*

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

*Article 56. Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal*

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

- (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
- (b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

*Article 57. Suspension of the operation of a treaty under its provisions or by consent of the parties*

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

- (a) in conformity with the provisions of the treaty; or
- (b) at any time by consent of all the parties after consultation with the other contracting States.

*Article 58. Suspension of the operation of a multilateral treaty by agreement between certain of the parties only*

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

- (a) the possibility of such a suspension is provided for by the treaty; or
  - (b) the suspension in question is not prohibited by the treaty and:
- (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

- (ii) is not incompatible with the object and purpose of the treaty.
- 2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

*Article 59. Termination or suspension of the operation of a treaty implied by conclusion of a later treaty*

- 1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:

- (a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or
- (b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

- 2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

*Article 60. Termination or suspension of the operation of a treaty as a consequence of its breach*

- 1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

- 2. A material breach of a multilateral treaty by one of the parties entitles:

- (a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:
  - (i) in the relations between themselves and the defaulting State; or
  - (ii) as between all the parties;
- (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
- (c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position

of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

#### *Article 61. Supervening impossibility of performance*

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

#### *Article 62. Fundamental change of circumstances*

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(a) if the treaty establishes a boundary; or

(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

#### *Article 63. Severance of diplomatic or consular relations*

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except insofar as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

#### *Article 64. Emergence of a new peremptory norm of general international law ("jus cogens")*

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

### Section 4. Procedure

#### *Article 65. Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty*

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

*Article 66. Procedures for judicial settlement,  
arbitration and conciliation*

If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

(a) any one of the parties to a dispute concerning the application or the interpretation of article 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;

(b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

*Article 67. Instruments for declaring invalid, terminating,  
withdrawing from or suspending the operation of a treaty*

1. The notification provided for under article 65, paragraph 1, must be made in writing.

2. Any act of declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

*Article 68. Revocation of notifications and instruments  
provided for in articles 65 and 67*

A notification or instrument provided for in article 65 or 67 may be revoked at any time before it takes effect.

Section 5. Consequences of the invalidity, termination or suspension of the operation of a treaty

*Article 69. Consequences of the invalidity of a treaty*

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.
2. If acts have nevertheless been performed in reliance on such a treaty:
  - (a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;
  - (b) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.
3. In cases falling under article 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.
4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

*Article 70. Consequences of the termination of a treaty*

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:
  - (a) releases the parties from any obligation further to perform the treaty;
  - (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.
2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

*Article 71. Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law*

1. In the case of a treaty which is void under article 53 the parties shall:
  - (a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and

(b) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination, provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

*Article 72. Consequences of the suspension of the operation of a treaty*

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;

(b) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

PART VI. MISCELLANEOUS PROVISIONS

*Article 73. Cases of State succession, State responsibility and outbreak of hostilities*

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

*Article 74. Diplomatic and consular relations and the conclusion of treaties*

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

*Article 75. Case of an aggressor State*

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

**PART VII. DEPOSITARIES, NOTIFICATIONS,  
CORRECTIONS AND REGISTRATION***Article 76. Depositaries of treaties*

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

*Article 77. Functions of depositaries*

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

(a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

(b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;

(e) informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(g) registering the treaty with the Secretariat of the United Nations;

(h) performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

#### *Article 78. Notifications and communications*

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:

(a) if there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;

(b) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(c) if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with article 77, paragraph 1 (e).

#### *Article 79. Correction of errors in texts or in certified copies of treaties*

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:

(a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a procès-verbal of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;

(b) an objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. The corrected text replaces the defective text *ab initio*, unless the signatory States and the contracting States otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a procès-verbal specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

#### *Article 80. Registration and publication of treaties*

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

### PART VIII. FINAL PROVISIONS

#### *Article 81. Signature*

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

*Article 82. Ratification*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article 83. Accession*

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 84. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article 85. Authentic texts*

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna this twenty-third day of May, one thousand nine hundred and sixty-nine.

## ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or ques-

tions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

7. CONVENTION ON THE PREVENTION AND PUNISHMENT  
OF CRIMES AGAINST INTERNATIONALLY PROTECTED  
PERSONS, INCLUDING DIPLOMATIC AGENTS

(a) GENERAL ASSEMBLY RESOLUTION 3166 (XXVIII)  
OF 14 DECEMBER 1973

*The General Assembly,*

*Considering* that the codification and progressive development of international law contributes to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

*Recalling* that in response to the request made in General Assembly resolution 2780 (XXVI) of 3 December 1971, the International Law Commission, at its twenty-fourth session, studied the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law and prepared draft articles on the prevention and punishment of crimes against such persons,

*Having considered* the draft articles and also the comments and observations thereon submitted by States, specialized agencies and other intergovernmental organizations in response to the invitation extended by the General Assembly in its resolution 2926 (XXVII) of 28 November 1972,

*Convinced* of the importance of securing international agreement on appropriate and effective measures for the prevention and punishment of crimes against diplomatic agents and other internationally protected persons in view of the serious threat to the maintenance and promotion of friendly relations and cooperation among States created by the commission of such crimes,

*Having elaborated* for that purpose the provisions contained in the Convention annexed hereto,

1. *Adopts* the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, annexed to the present resolution;
2. *Re-emphasizes* the great importance of the rules of international law concerning the inviolability of and special protection to be afforded to internationally protected persons and the obligations of States in relation thereto;
3. *Considers* that the annexed Convention will enable States to carry out their obligations more effectively;
4. *Recognizes also* that the provisions of the annexed Convention could not in any way prejudice the exercise of the legitimate right to self-determination and independence, in accordance with the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, by peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and *apartheid*;
5. *Invites* States to become parties to the annexed Convention;
6. *Decides* that the present resolution, whose provisions are related to the annexed Convention, shall always be published together with it.

(b) CONVENTION ON THE PREVENTION AND PUNISHMENT OF  
CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS,  
INCLUDING DIPLOMATIC AGENTS,\* ANNEXED TO  
GENERAL ASSEMBLY RESOLUTION 3166 (XVIII)  
OF 14 DECEMBER 1973

*The States Parties to this Convention,*

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and the promotion of friendly relations and cooperation among States,

*Considering* that crimes against diplomatic agents and other internationally protected persons jeopardizing the safety of these persons create a serious threat to the maintenance of normal international relations which are necessary for cooperation among States,

*Believing* that the commission of such crimes is a matter of grave concern to the international community,

*Convinced* that there is an urgent need to adopt appropriate and effective measures for the prevention and punishment of such crimes,

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\* Came into force on 20 February 1977. United Nations, *Treaty Series*, vol. 1035, p. 167.

*Have agreed as follows:*

### *Article 1*

For the purposes of this Convention:

1. “Internationally protected person” means:

(a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;

(b) any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household.

2. “Alleged offender” means a person as to whom there is sufficient evidence to determine *prima facie* that he has committed or participated in one or more of the crimes set forth in article 2.

### *Article 2*

1. The intentional commission of:

(a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

(b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;

(c) a threat to commit any such attack;

(d) an attempt to commit any such attack; and

(e) an act constituting participation as an accomplice in any such attack shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

*Article 3*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:

(a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State;

(c) when the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

*Article 4*

States Parties shall cooperate in the prevention of the crimes set forth in article 2, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;

(b) exchanging information and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

*Article 5*

1. The State Party in which any of the crimes set forth in article 2 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to all other States concerned, directly or through the Secretary-General of the United Nations, all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever any of the crimes set forth in article 2 has been committed against an internationally protected person, any State Party which has information concerning the victim and the circumstances of the crime shall endeavour to transmit it, under the conditions provided

for in its internal law, fully and promptly to the State Party on whose behalf he was exercising his functions.

#### *Article 6*

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its internal law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) the State where the crime was committed;
- (b) the State or States of which the alleged offender is a national or, if he is a stateless person, in whose territory he permanently resides;
- (c) the State or States of which the internationally protected person concerned is a national or on whose behalf he was exercising his functions;
- (d) all other States concerned; and
- (e) the international organization of which the internationally protected person concerned is an official or an agent.

2. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, which he requests and which is willing to protect his rights; and
- (b) to be visited by a representative of that State.

#### *Article 7*

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

#### *Article 8*

1. To the extent that the crimes set forth in article 2 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.

4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 3.

#### *Article 9*

Any person regarding whom proceedings are being carried out in connection with any of the crimes set forth in article 2 shall be guaranteed fair treatment at all stages of the proceedings.

#### *Article 10*

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the crimes set forth in article 2, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

#### *Article 11*

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

#### *Article 12*

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with

respect to another State Party to this Convention which is not a party to those Treaties.

#### *Article 13*

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### *Article 14*

This Convention shall be open for signature by all States, until 31 December 1974, at United Nations Headquarters in New York.

#### *Article 15*

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### *Article 16*

This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### *Article 17*

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the

Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article 18*

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect six months following the date on which notification is received by the Secretary-General of the United Nations.

*Article 19*

The Secretary-General of the United Nations shall inform all States, *inter alia*:

(a) of signatures to this Convention, of the deposit of instruments of ratification or accession in accordance with articles 14, 15 and 16 and of notifications made under article 18;

(b) of the date on which this Convention will enter into force in accordance with article 17.

*Article 20*

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 14 December 1973.

8. VIENNA CONVENTION ON THE REPRESENTATION  
OF STATES IN THEIR RELATIONS WITH INTERNATIONAL  
ORGANIZATIONS OF A UNIVERSAL CHARACTER

VIENNA CONVENTION ON THE REPRESENTATION OF STATES  
IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS  
OF A UNIVERSAL CHARACTER. DONE AT VIENNA,  
ON 14 MARCH 1975\*

*The States Parties to the present Convention,*

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\* Not yet in force. See *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II (United Nations publication, Sales No. E.75.V.12).

*Recognizing* the increasingly important role of multilateral diplomacy in relations between States and the responsibilities of the United Nations, its specialized agencies and other international organizations of a universal character within the international community,

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security and the promotion of friendly relations and cooperation among States,

*Recalling* the work of codification and progressive development of international law applicable to bilateral relations between States which was achieved by the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, and the Convention on Special Missions of 1969,

*Believing* that an international convention on the representation of States in their relations with international organizations of a universal character would contribute to the promotion of friendly relations and cooperation among States, irrespective of their political, economic and social systems,

*Recalling* the provisions of Article 105 of the Charter of the United Nations,

*Recognizing* that the purpose of privileges and immunities contained in the present Convention is not to benefit individuals but to ensure the efficient performance of their functions in connection with organizations and conferences,

*Taking account* of the Convention on the Privileges and Immunities of the United Nations of 1946, the Convention on the Privileges and Immunities of the Specialized Agencies of 1947 and other agreements in force between States and between States and international organizations,

*Affirming* that the rules of customary international law continue to govern questions not expressly regulated by the provisions of the present Convention,

*Have agreed* as follows:

## PART I. INTRODUCTION

### *Article 1. Use of terms*

1. For the purposes of the present Convention:

(1) "international organization" means an intergovernmental organization;

(2) "international organization of a universal character" means the United Nations, its specialized agencies, the International Atomic

Energy Agency and any similar organization whose membership and responsibilities are on a worldwide scale;

(3) "Organization" means the international organization in question;

(4) "organ" means:

(a) any principal or subsidiary organ of an international organization, or

(b) any commission, committee or subgroup of any such organ, in which States are members;

(5) "conference" means a conference of States convened by or under the auspices of an international organization;

(6) "mission" means, as the case may be, the permanent mission or the permanent observer mission;

(7) "permanent mission" means a mission of permanent character, representing the State, sent by a State member of an international organization to the Organization;

(8) "permanent observer mission" means a mission of permanent character, representing the State, sent to an international organization by a State not a member of the Organization;

(9) "delegation" means, as the case may be, the delegation to an organ or the delegation to a conference;

(10) "delegation to an organ" means the delegation sent by a State to participate on its behalf in the proceedings of the organ;

(11) "delegation to a conference" means the delegation sent by a State to participate on its behalf in the conference;

(12) "observer delegation" means, as the case may be, the observer delegation to an organ or the observer delegation to a conference;

(13) "observer delegation to an organ" means the delegation sent by a State to participate on its behalf as an observer in the proceedings of the organ;

(14) "observer delegation to a conference" means the delegation sent by a State to participate on its behalf as an observer in the proceedings of the conference;

(15) "host State" means the State in whose territory:

(a) the Organization has its seat or an office, or

(b) a meeting of an organ or a conference is held;

(16) "sending State" means the State which sends:

(a) a mission to the Organization at its seat or to an office of the Organization, or

(b) a delegation to an organ or a delegation to a conference, or

(c) an observer delegation to an organ or an observer delegation to a conference;

(17) "head of mission" means, as the case may be, the permanent representative or the permanent observer;

(18) "permanent representative" means the person charged by the sending State with the duty of acting as the head of the permanent mission;

(19) "permanent observer" means the person charged by the sending State with the duty of acting as the head of the permanent observer mission;

(20) "members of the mission" means the head of mission and the members of the staff;

(21) "head of delegation" means the delegate charged by the sending State with the duty of acting in that capacity;

(22) "delegate" means any person designated by a State to participate as its representative in the proceedings of an organ or in a conference;

(23) "members of the delegation" means the delegates and the members of the staff;

(24) "head of the observer delegation" means the observer delegate charged by the sending State with the duty of acting in that capacity;

(25) "observer delegate" means any person designated by a State to attend as an observer the proceedings of an organ or of a conference;

(26) "members of the observer delegation" means the observer delegates and the members of the staff;

(27) "members of the staff" means the members of the diplomatic staff, the administrative and technical staff and the service staff of the mission, the delegation or the observer delegation;

(28) "members of the diplomatic staff" means the members of the staff of the mission, the delegation or the observer delegation who enjoy diplomatic status for the purpose of the mission, the delegation or the observer delegation;

(29) "members of the administrative and technical staff" means the members of the staff employed in the administrative and technical service of the mission, the delegation or the observer delegation;

(30) "members of the service staff" means the members of the staff employed by the mission, the delegation or the observer delegation as household workers or for similar tasks;

(31) "private staff" means persons employed exclusively in the private service of the members of the mission or the delegation;

(32) "premises of the mission" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purpose of the mission, including the residence of the head of mission;

(33) "premises of the delegation" means the buildings or parts of buildings, irrespective of ownership, used solely as the offices of the delegation;

(34) "rules of the Organization" means, in particular, the constituent instruments, relevant decisions and resolutions, and established practice of the Organization.

2. The provisions of paragraph 1 of this article regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or the internal law of any State.

#### *Article 2. Scope of the present Convention*

1. The present Convention applies to the representation of States in their relations with any international organization of a universal character, and to their representation at conferences convened by or under the auspices of such an organization, when the Convention has been accepted by the host State and the Organization has completed the procedure envisaged by article 90.

2. The fact that the present Convention does not apply to other international organizations is without prejudice to the application to the representation of States in their relations with such other organizations of any of the rules set forth in the Convention which would be applicable under international law independently of the Convention.

3. The fact that the present Convention does not apply to other conferences is without prejudice to the application to the representation of States at such other conferences of any of the rules set forth in the Convention which would be applicable under international law independently of the Convention.

4. Nothing in the present Convention shall preclude the conclusion of agreements between States or between States and international organizations making the Convention applicable in whole or in part to international organizations or conferences other than those referred to in paragraph 1 of this article.

*Article 3. Relationship between the present Convention and the relevant rules of international organizations or conferences*

The provisions of the present Convention are without prejudice to any relevant rules of the Organization or to any relevant rules of procedure of the Conference.

*Article 4. Relationship between the present Convention and other international agreements*

The provisions of the present Convention:

(a) are without prejudice to other international agreements in force between States or between States and international organizations of a universal character, and

(b) shall not preclude the conclusion of other international agreements regarding the representation of States in their relations with international organizations of a universal character or their representation at conferences convened by or under the auspices of such organizations.

## PART II. MISSIONS TO INTERNATIONAL ORGANIZATIONS

*Article 5. Establishment of missions*

1. Member States may, if the rules of the Organization so permit, establish permanent missions for the performance of the functions mentioned in article 6.

2. Non-member States may, if the rules of the Organization so permit, establish permanent observer missions for the performance of the functions mentioned in article 7.

3. The Organization shall notify the host State of the institution of a mission prior to its establishment.

*Article 6. Functions of the permanent mission*

The functions of the permanent mission consist, *inter alia*, in:

(a) ensuring the representation of the sending State to the Organization;

(b) maintaining liaison between the sending State and the Organization;

(c) negotiating with and within the Organization;

(d) ascertaining activities in the Organization and reporting thereon to the Government of the sending State;

(e) ensuring the participation of the sending State in the activities of the Organization;

- (f) protecting the interests of the sending State in relation to the Organization;
- (g) promoting the realization of the purposes and principles of the Organization by cooperating with and within the Organization.

*Article 7. Functions of the permanent observer mission*

The functions of the permanent observer mission consist, *inter alia*, in:

- (a) ensuring the representation of the sending State and safeguarding its interests in relation to the Organization and maintaining liaison with it;
- (b) ascertaining activities in the Organization and reporting thereto to the Government of the sending State;
- (c) promoting cooperation with the Organization and negotiating with it.

*Article 8. Multiple accreditation or appointment*

1. The sending State may accredit the same person as head of mission to two or more international organizations or appoint a head of mission as a member of the diplomatic staff of another of its missions.
2. The sending State may accredit a member of the diplomatic staff of the mission as head of mission to other international organizations or appoint a member of the staff of the mission as a member of the staff of another of its missions.
3. Two or more States may accredit the same person as head of mission to the same international organization.

*Article 9. Appointment of the members of the mission*

Subject to the provisions of articles 14 and 73, the sending State may freely appoint the members of the mission.

*Article 10. Credentials of the head of mission*

The credentials of the head of mission shall be issued by the Head of State, by the Head of Government, by the Minister for Foreign Affairs or, if the rules of the Organization so permit, by another competent authority of the sending State and shall be transmitted to the Organization.

*Article 11. Accreditation to organs of the Organization*

1. A member State may specify in the credentials issued to its permanent representative that he is authorized to act as a delegate to one or more organs of the Organization.
2. Unless a member State provides otherwise, its permanent representative may act as a delegate to organs of the Organization for which there are no special requirements as regards representation.
3. A non-member State may specify in the credentials issued to its permanent observer that he is authorized to act as an observer delegate to one or more organs of the Organization when this is permitted by the rules of the Organization or the organ concerned.

*Article 12. Full powers for the conclusion of a treaty with the Organization*

1. The head of mission, by virtue of his functions and without having to produce full powers, is considered as representing his State for the purpose of adopting the text of a treaty between that State and the Organization.
2. The head of mission is not considered by virtue of his functions as representing his State for the purpose of signing a treaty, or signing a treaty *ad referendum*, between that State and the Organization unless it appears from the practice of the Organization, or from other circumstances, that the intention of the parties was to dispense with full powers.

*Article 13. Composition of the mission*

In addition to the head of mission, the mission may include diplomatic staff, administrative and technical staff and service staff.

*Article 14. Size of the mission*

The size of the mission shall not exceed what is reasonable and normal, having regard to the functions of the Organization, the needs of the particular mission and the circumstances and conditions in the host State.

*Article 15. Notifications*

1. The sending State shall notify the Organization of:
  - (a) the appointment, position, title and order of precedence of the members of the mission, their arrival, their final departure or the termination of their functions with the mission, and any other changes

affecting their status that may occur in the course of their service with the mission;

(b) the arrival and final departure of any person belonging to the family of a member of the mission and forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;

(c) the arrival and final departure of persons employed on the private staff of members of the mission and the termination of their employment as such;

(d) the beginning and the termination of the employment of persons resident in the host State as members of the staff of the mission or as persons employed on the private staff;

(e) the location of the premises of the mission and of the private residences enjoying inviolability under articles 23 and 29, as well as any other information that may be necessary to identify such premises and residences.

2. Where possible, prior notification of arrival and final departure shall also be given.

3. The Organization shall transmit to the host State the notification referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notification referred to in paragraphs 1 and 2 of this article.

#### *Article 16. Acting head of mission*

If the post of head of mission is vacant, or if the head of mission is unable to perform his functions, the sending State may appoint an acting head of mission whose name shall be notified to the Organization and by it to the host State.

#### *Article 17. Precedence*

1. Precedence among permanent representatives shall be determined by the alphabetical order of the names of the States used in the Organization.

2. Precedence among permanent observers shall be determined by the alphabetical order of the names of the States used in the Organization.

#### *Article 18. Location of the mission*

Missions should be established in the locality where the Organization has its seat. However, if the rules of the Organization so permit and

with the prior consent of the host State, the sending State may establish a mission or an office of a mission in a locality other than that in which the Organization has its seat.

*Article 19. Use of flag and emblem*

1. The mission shall have the right to use the flag and emblem of the sending State on its premises. The head of mission shall have the same right as regards his residence and means of transport.
2. In the exercise of the right accorded by this article regard shall be had to the laws, regulations and usages of the host State.

*Article 20. General facilities*

1. The host State shall accord to the mission all necessary facilities for the performance of its functions.
2. The Organization shall assist the mission in obtaining those facilities and shall accord to the mission such facilities as lie within its own competence.

*Article 21. Premises and accommodation*

1. The host State and the Organization shall assist the sending State in obtaining on reasonable terms premises necessary for the mission in the territory of the host State. Where necessary, the host State shall facilitate in accordance with its laws the acquisition of such premises.
2. Where necessary, the host State and the Organization shall also assist the mission in obtaining on reasonable terms suitable accommodation for its members.

*Article 22. Assistance by the Organization in respect of privileges and immunities*

1. The Organization shall, where necessary, assist the sending State, its mission and the members of its mission in securing the enjoyment of the privileges and immunities provided for under the present Convention.
2. The Organization shall, where necessary, assist the host State in securing the discharge of the obligations of the sending State, its mission and the members of its mission in respect of the privileges and immunities provided for under the present Convention.

*Article 23. Inviolability of premises*

1. The premises of the mission shall be inviolable. The agents of the host State may not enter them, except with the consent of the head of mission.
2. (a) The host State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
- (b) In case of an attack on the premises of the mission, the host State shall take all appropriate steps to prosecute and punish persons who have committed the attack.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

*Article 24. Exemption of the premises from taxation*

1. The premises of the mission of which the sending State or any person acting on its behalf is the owner or the lessee shall be exempt from all national, regional or municipal dues and taxes other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or with any person acting on its behalf.

*Article 25. Inviolability of archives and documents*

The archives and documents of the mission shall be inviolable at all times and wherever they may be.

*Article 26. Freedom of movement*

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure freedom of movement and travel in its territory to all members of the mission and members of their families forming part of their households.

*Article 27. Freedom of communication*

1. The host State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government of the sending State, its permanent diplomatic missions,

consular posts, permanent missions, permanent observer missions, special missions, delegations and observer delegations, wherever situated, the mission may employ all appropriate means, including couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The bag of the mission shall not be opened or detained.

4. The packages constituting the bag of the mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the mission.

5. The courier of the mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate couriers *ad hoc* of the mission. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the mission's bag in his charge.

7. The bag of the mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the mission. By arrangement with the appropriate authorities of the host State, the mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

#### *Article 28. Personal inviolability*

The persons of the head of mission and of the members of the diplomatic staff of the mission shall be inviolable. They shall not be liable to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity and to prosecute and punish persons who have committed such attacks.

*Article 29. Inviolability of residence and property*

1. The private residence of the head of mission and of the members of the diplomatic staff of the mission shall enjoy the same inviolability and protection as the premises of the mission.
2. The papers, correspondence and, except as provided in paragraph 2 of article 30, the property of the head of mission or of members of the diplomatic staff of the mission shall also enjoy inviolability.

*Article 30. Immunity from jurisdiction*

1. The head of mission and the members of the diplomatic staff of the mission shall enjoy immunity from the criminal jurisdiction of the host State. They shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
  - (a) a real action relating to private immovable property situated in the territory of the host State, unless the person in question holds it on behalf of the sending State for the purposes of the mission;
  - (b) an action relating to succession in which the person in question is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
  - (c) an action relating to any professional or commercial activity exercised by the person in question in the host State outside his official functions.
2. No measures of execution may be taken in respect of the head of mission or a member of the diplomatic staff of the mission except in cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

3. The head of mission and the members of the diplomatic staff of the mission are not obliged to give evidence as witnesses.
4. The immunity of the head of mission or of a member of the diplomatic staff of the mission from the jurisdiction of the host State does not exempt him from the jurisdiction of the sending State.

*Article 31. Waiver of immunity*

1. The immunity from jurisdiction of the head of mission and members of the diplomatic staff of the mission and of persons enjoying immunity under article 36 may be waived by the sending State.
2. Waiver must always be express.
3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immu-

nity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 of this article in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case.

#### *Article 32. Exemption from social security legislation*

1. Subject to the provisions of paragraph 3 of this article, the head of mission and the members of the diplomatic staff of the mission shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of the head of mission or of a member of the diplomatic staff of the mission, on condition:

(a) that such employed persons are not nationals of or permanently resident in the host State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The head of mission and the members of the diplomatic staff of the mission who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the host State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multi-lateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

#### *Article 33. Exemption from dues and taxes*

The head of mission and the members of the diplomatic staff of the mission shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 38;
- (d) dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 24.

*Article 34. Exemption from personal services*

The host State shall exempt the head of mission and the members of the diplomatic staff of the mission from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

*Article 35. Exemption from customs duties and inspection*

1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:
  - (a) articles for the official use of the mission;
  - (b) articles for the personal use of the head of mission or a member of the diplomatic staff of the mission, including articles intended for his establishment.
2. The personal baggage of the head of mission or a member of the diplomatic staff of the mission shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. In such cases, inspection shall be conducted only in the presence of the person enjoying the exemption or of his authorized representative.

*Article 36. Privileges and immunities of other persons*

1. The members of the family of the head of mission forming part of his household and the members of the family of a member of the diplomatic staff of the mission forming part of his household shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 28, 29, 30, 32, 33, 34 and in paragraphs 1(b) and 2 of article 35.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households who are not nationals of or permanently resident in the host State, shall enjoy the privileges and immunities specified in articles 28, 29, 30, 32, 33 and 34, except that the immunity from civil and administrative jurisdiction of the host State specified in paragraph 1 of article 30 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in paragraph 1 (b) of article 35 in respect of articles imported at the time of final installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the host State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption specified in article 32.

4. Private staff of members of the mission shall, if they are not nationals of or permanently resident in the host State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

*Article 37. Nationals and permanent residents of the host State*

1. Except in so far as additional privileges and immunities may be granted by the host State, the head of mission or any member of the diplomatic staff of the mission who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission who are nationals of or permanently resident in the host State shall enjoy only immunity from jurisdiction in respect of official acts performed in the exercise of their functions. In all other respects, those members, and persons on the private staff who are nationals of or permanently resident in the host

State, shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those members and persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

*Article 38. Duration of privileges and immunities*

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the host State by the Organization or by the sending State.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the territory, or on the expiry of a reasonable period in which to do so. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In the event of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory.

4. In the event of the death of a member of the mission not a national of or permanently resident in the host State or of a member of his family forming part of his household, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the territory the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the mission or of the family of a member of the mission.

*Article 39. Professional or commercial activity*

1. The head of mission and members of the diplomatic staff of the mission shall not practise for personal profit any professional or commercial activity in the host State.

2. Except insofar as such privileges and immunities may be granted by the host State, members of the administrative and technical staff and persons forming part of the household of a member of the mission shall not, when they practise a professional or commercial activity for personal profit, enjoy any privilege or immunity in respect of acts performed in the course of or in connection with the practise of such activity.

*Article 40. End of functions*

The functions of the head of mission or of a member of the diplomatic staff of the mission shall come to an end, *inter alia*:

- (a) on notification of their termination by the sending State to the Organization;
- (b) if the mission is finally or temporarily recalled.

*Article 41. Protection of premises, property and archives*

1. When the mission is temporarily or finally recalled, the host State must respect and protect the premises, property and archives of the mission. The sending State must take all appropriate measures to terminate this special duty of the host State as soon as possible. It may entrust custody of the premises, property and archives of the mission to the Organization if it so agrees, or to a third State acceptable to the host State.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and archives of the mission from the territory of the host State.

## PART III. DELEGATIONS TO ORGANS AND TO CONFERENCES

*Article 42. Sending of delegations*

1. A State may send a delegation to an organ or to a conference in accordance with the rules of the Organization.

2. Two or more States may send the same delegation to an organ or to a conference in accordance with the rules of the Organization.

*Article 43. Appointment of the members of the delegation*

Subject to the provisions of articles 46 and 73, the sending State may freely appoint the members of the delegation.

*Article 44. Credentials of delegates*

The credentials of the head of delegation and of other delegates shall be issued by the Head of State, by the Head of Government, by the Minister for Foreign Affairs or, if the rules of the Organization or the rules of procedure of the conference so permit, by another competent authority of the sending State. They shall be transmitted, as the case may be, to the Organization or to the conference.

*Article 45. Composition of the delegation*

In addition to the head of delegation, the delegation may include other delegates, diplomatic staff, administrative and technical staff and service staff.

*Article 46. Size of the delegation*

The size of the delegation shall not exceed what is reasonable and normal, having regard, as the case may be, to the functions of the organ or the object of the conference, as well as the needs of the particular delegation and the circumstances and conditions in the host State.

*Article 47. Notifications*

1. The sending State shall notify the Organization or, as the case may be, the conference of:

(a) the composition of the delegation, including the position, title and order of precedence of the members of the delegation, and any subsequent changes therein;

(b) the arrival and final departure of members of the delegation and the termination of their functions with the delegation;

(c) the arrival and final departure of any person accompanying a member of the delegation;

(d) the beginning and the termination of the employment of persons resident in the host State as members of the staff of the delegation or as persons employed on the private staff;

(e) the location of the premises of the delegation and of the private accommodation enjoying inviolability under article 59, as well as any other information that may be necessary to identify such premises and accommodation.

2. Where possible, prior notification of arrival and final departure shall also be given.

3. The Organization or, as the case may be, the conference shall transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

*Article 48. Acting head of delegation*

1. If the head of delegation is absent or unable to perform his functions, an acting head of delegation shall be designated from among the other delegates by the head of delegation or, in case he is unable to do

so, by a competent authority of the sending State. The name of the acting head of delegation shall be notified, as the case may be, to the Organization or to the conference.

2. If a delegation does not have another delegate available to serve as acting head of delegation, another person may be designated for that purpose. In such case credentials must be issued and transmitted in accordance with article 44.

#### *Article 49. Precedence*

Precedence among delegations shall be determined by the alphabetical order of the names of the States used in the Organization.

#### *Article 50. Status of the Head of State and persons of high rank*

1. The Head of State or any member of a collegial body performing the functions of Head of State under the constitution of the State concerned, when he leads the delegation, shall enjoy in the host State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law to Heads of State.

2. The Head of Government, the Minister for Foreign Affairs or other person of high rank, when he leads or is a member of the delegation, shall enjoy in the host State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law to such persons.

#### *Article 51. General facilities*

1. The host State shall accord to the delegation all necessary facilities for the performance of its tasks.

2. The Organization or, as the case may be, the conference shall assist the delegation in obtaining those facilities and shall accord to the delegation such facilities as lie within its own competence.

#### *Article 52. Premises and accommodation*

If so requested, the host State and, where necessary, the Organization or the conference shall assist the sending State in obtaining on reasonable terms premises necessary for the delegation and suitable accommodation for its members.

*Article 53. Assistance in respect of privileges and immunities*

1. The Organization or, as the case may be, the Organization and the conference shall, where necessary, assist the sending State, its delegation and the members of its delegation in securing the enjoyment of the privileges and immunities provided for under the present Convention.

2. The Organization or, as the case may be, the Organization and the conference shall, where necessary, assist the host State in securing the discharge of the obligations of the sending State, its delegation and the members of its delegation in respect of the privileges and immunities provided for under the present Convention.

*Article 54. Exemption of the premises from taxation*

1. The sending State or any member of the delegation acting on behalf of the delegation shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the delegation other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or with a member of the delegation.

*Article 55. Inviolability of archives and documents*

The archives and documents of the delegation shall be inviolable at all times and wherever they may be.

*Article 56. Freedom of movement*

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure to all members of the delegation such freedom of movement and travel in its territory as is necessary for the performance of the tasks of the delegation.

*Article 57. Freedom of communication*

1. The host State shall permit and protect free communication on the part of the delegation for all official purposes. In communicating with the Government of the sending State, its permanent diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions, other delegations, and observer delegations, wherever situated, the delegation may employ all appropriate means, including couriers and messages in code or cipher. However, the delega-

tion may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the delegation shall be inviolable. Official correspondence means all correspondence relating to the delegation and its tasks.

3. Where practicable, the delegation shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission, of a consular post, of the permanent mission or of the permanent observer mission of the sending State.

4. The bag of the delegation shall not be opened or detained.

5. The packages constituting the bag of the delegation must bear visible external marks of their character and may contain only documents or articles intended for the official use of the delegation.

6. The courier of the delegation, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

7. The sending State or the delegation may designate couriers *ad hoc* of the delegation. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the delegation's bag in his charge.

8. The bag of the delegation may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the delegation. By arrangement with the appropriate authorities of the host State, the delegation may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

#### *Article 58. Personal inviolability*

The persons of the head of delegation and of other delegates and members of the diplomatic staff of the delegation shall be inviolable. They shall not be liable, *inter alia*, to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity and to prosecute and punish persons who have committed such attacks.

*Article 59. Inviolability of private accommodation and property*

1. The private accommodation of the head of delegation and of other delegates and members of the diplomatic staff of the delegation shall enjoy inviolability and protection.
2. The papers, correspondence and, except as provided in paragraph 2 of article 60, the property of the head of delegation and of other delegates or members of the diplomatic staff of the delegation shall also enjoy inviolability.

*Article 60. Immunity from jurisdiction*

1. The head of delegation and other delegates and members of the diplomatic staff of the delegation shall enjoy immunity from the criminal jurisdiction of the host State, and immunity from its civil and administrative jurisdiction in respect of all acts performed in the exercise of their official functions.
2. No measures of execution may be taken in respect of such persons unless they can be taken without infringing their rights under articles 58 and 59.
3. Such persons are not obliged to give evidence as witnesses.
4. Nothing in this article shall exempt such persons from the civil and administrative jurisdiction of the host State in relation to an action for damages arising from an accident caused by a vehicle, vessel or aircraft, used or owned by the persons in question, where those damages are not recoverable from insurance.
5. Any immunity of such persons from the jurisdiction of the host State does not exempt them from the jurisdiction of the sending State.

*Article 61. Waiver of immunity*

1. The immunity from jurisdiction of the head of delegation and of other delegates and members of the diplomatic staff of the delegation and of persons enjoying immunity under article 66 may be waived by the sending State.
2. Waiver must always be express.
3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.
4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immu-

nity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 of this article in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case.

*Article 62. Exemption from social security legislation*

1. Subject to the provisions of paragraph 3 of this article, the head of delegation and other delegates and members of the diplomatic staff of the delegation shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation, on condition:

(a) that such employed persons are not nationals of or permanently resident in the host State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The head of delegation and other delegates and members of the diplomatic staff of the delegation who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the host State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multi-lateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

*Article 63. Exemption from dues and taxes*

The head of delegation and other delegates and members of the diplomatic staff of the delegation shall be exempt, to the extent practicable, from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

- (b) dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the delegation;
- (c) estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 68;
- (d) dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 54.

*Article 64. Exemption from personal services*

The host State shall exempt the head of delegation and other delegates and members of the diplomatic staff of the delegation from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

*Article 65. Exemption from customs duties and inspection*

1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the delegation;
  - (b) articles for the personal use of the head of delegation or any other delegate or member of the diplomatic staff of the delegation, imported in his personal baggage at the time of his first entry into the territory of the host State to attend the meeting of the organ or conference.
2. The personal baggage of the head of delegation or any other delegate or member of the diplomatic staff of the delegation shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. In such cases, inspection shall be conducted only in the presence of the person enjoying the exemption or of his authorized representative.

*Article 66. Privileges and immunities of other persons*

1. The members of the family of the head of delegation who accompany him and the members of the family of any other delegate or member of the diplomatic staff of the delegation who accompany him shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 58, 60 and 64 and in paragraphs 1 (b) and 2 of article 65 and exemption from aliens' registration obligations.
2. Members of the administrative and technical staff of the delegation shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 58, 59, 60, 62, 63 and 64. They shall also enjoy the privileges specified in paragraph 1 (b) of article 65 in respect of articles imported in their personal baggage at the time of their first entry into the territory of the host State for the purpose of attending the meeting of the organ or conference. Members of the family of a member of the administrative and technical staff who accompany him shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 58, 60 and 64 and in paragraph 1 (b) of article 65 to the extent accorded to such a member of the staff.

3. Members of the service staff of the delegation who are not nationals of or permanently resident in the host State shall enjoy the same immunity in respect of acts performed in the course of their duties as is accorded to members of the administrative and technical staff of the delegation, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption specified in article 62.

4. Private staff of members of the delegation shall, if they are not nationals of or permanently resident in the host State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the tasks of the delegation.

*Article 67. Nationals and permanent residents of the host State*

1. Except insofar as additional privileges and immunities may be granted by the host State the head of delegation or any other delegate or member of the diplomatic staff of the delegation who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the delegation and persons on the private staff who are nationals of or permanently resident in the host State shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those members and persons in such a manner as not to interfere unduly with the performance of the tasks of the delegation.

*Article 68. Duration of privileges and immunities*

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State for the purpose of attending the meeting of an organ or conference or, if already in its territory, from the moment when his appointment is notified to the host State by the Organization, by the conference or by the sending State.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the territory, or on the expiry of a reasonable period in which to do so. However, with respect to acts performed by such a person in the exercise of his functions as a member of the delegation, immunity shall continue to subsist.

3. In the event of the death of a member of the delegation, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory.

4. In the event of the death of a member of the delegation not a national of or permanently resident in the host State or of a member of his family accompanying him, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the territory the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the delegation or of the family of a member of the delegation.

*Article 69. End of functions*

The functions of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation shall come to an end, *inter alia*:

(a) on notification of their termination by the sending State to the Organization or the conference;

(b) upon the conclusion of the meeting of the organ or the conference.

*Article 70. Protection of premises, property and archives*

1. When the meeting of an organ or a conference comes to an end, the host State must respect and protect the premises of the delegation so long as they are used by it, as well as the property and archives of the delegation. The sending State must take all appropriate measures to terminate this special duty of the host State as soon as possible.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and the archives of the delegation from the territory of the host State.

PART IV. OBSERVER DELEGATIONS TO ORGANS AND TO CONFERENCES

*Article 71. Sending of observer delegations*

A State may send an observer delegation to an organ or to a conference in accordance with the rules of the Organization.

*Article 72. General provision concerning observer delegations*

All the provisions of articles 43 to 70 of the present Convention shall apply to observer delegations.

PART V. GENERAL PROVISIONS

*Article 73. Nationality of the members of the mission, the delegation or the observer delegation*

1. The head of mission and members of the diplomatic staff of the mission, the head of delegation, other delegates and members of the diplomatic staff of the delegation, the head of the observer delegation, other observer delegates and members of the diplomatic staff of the observer delegation should in principle be of the nationality of the sending State.

2. The head of mission and members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the host State except with the consent of that State, which may be withdrawn at any time.

3. Where the head of delegation, any other delegate or any member of the diplomatic staff of the delegation or the head of the observer delegation, any other observer delegate or any member of the diplomatic staff of the observer delegation is appointed from among persons having the nationality of the host State, the consent of that State shall be

assumed if it has been notified of such appointment of a national of the host State and has made no objection.

*Article 74. Laws concerning acquisition of nationality*

Members of the mission, the delegation or the observer delegation not being nationals of the host State, and members of their families forming part of their household or, as the case may be, accompanying them, shall not, solely by the operation of the law of the host State, acquire the nationality of that State.

*Article 75. Privileges and immunities in case of multiple functions*

When members of the permanent diplomatic mission or of a consular post in the host State are included in a mission, a delegation or an observer delegation, they shall retain their privileges and immunities as members of their permanent diplomatic mission or consular post in addition to the privileges and immunities accorded by the present Convention.

*Article 76. Cooperation between sending States and host States*

Whenever necessary and to the extent compatible with the independent exercise of the functions of the mission, the delegation or the observer delegation, the sending State shall cooperate as fully as possible with the host State in the conduct of any investigation or prosecution carried out pursuant to the provisions of articles 23, 28, 29 and 58.

*Article 77. Respect for the laws and regulations of the host State*

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host State. They also have a duty not to interfere in the internal affairs of that State.

2. In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction, the sending State shall, unless it waives the immunity of the person concerned, recall him, terminate his functions with the mission, the delegation or the observer delegation or secure his departure, as appropriate. The sending State shall take the same action in case of grave and manifest interference in the internal affairs of the host State. The provisions of this paragraph shall not apply in the case of any act that the person concerned performed in carrying out the functions of the mission or the tasks of the delegation or of the observer delegation.

3. The premises of the mission and the premises of the delegation shall not be used in any manner incompatible with the exercise of the functions of the mission or the performance of the tasks of the delegation.

4. Nothing in this article shall be construed as prohibiting the host State from taking such measures as are necessary for its own protection. In that event the host State shall, without prejudice to articles 84 and 85, consult the sending State in an appropriate manner in order to ensure that such measures do not interfere with the normal functioning of the mission, the delegation or the observer delegation.

5. The measures provided for in paragraph 4 of this article shall be taken with the approval of the Minister for Foreign Affairs or of any other competent minister in conformity with the constitutional rules of the host State.

#### *Article 78. Insurance against third-party risks*

The members of the mission, of the delegation or of the observer delegation shall comply with all obligations under the laws and regulations of the host State relating to third-party liability insurance for any vehicle, vessel or aircraft used or owned by them.

#### *Article 79. Entry into the territory of the host State*

1. The host State shall permit entry into its territory:

(a) members of the mission and members of their families forming part of their respective households, and

(b) members of the delegation and members of their families accompanying them, and

(c) members of the observer delegation and members of their families accompanying them.

2. Visas, when required, shall be granted as promptly as possible to any person referred to in paragraph 1 of this article.

#### *Article 80. Facilities for departure*

The host State shall, if requested, grant facilities to enable persons enjoying privileges and immunities, other than nationals of the host State, and members of the families of such persons irrespective of their nationality, to leave its territory.

*Article 81. Transit through the territory of a third State*

1. If a head of mission or a member of the diplomatic staff of the mission, a head of delegation, other delegate or member of the diplomatic staff of the delegation, a head of an observer delegation, other observer delegate or member of the diplomatic staff of the observer delegation passes through or is in the territory of a third State which has granted him a passport visa if such visa was necessary, while proceeding to take up or to resume his functions, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit.

2. The provisions of paragraph 1 of this article shall also apply in the case of:

(a) members of the family of the head of mission or of a member of the diplomatic staff of the mission forming part of his household and enjoying privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country;

(b) members of the family of the head of delegation, of any other delegate or member of the diplomatic staff of the delegation who are accompanying him and enjoying privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country;

(c) members of the family of the head of the observer delegation, of any other observer delegate or member of the diplomatic staff of the observer delegation, who are accompanying him and enjoy privileges and immunities whether travelling with him or travelling separately to join him or to return to their country.

3. In circumstances similar to those specified in paragraphs 1 and 2 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff, and of members of their families, through their territories.

4. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the host State is bound to accord under the present Convention. They shall accord to the couriers of the mission, of the delegation or of the observer delegation, who have been granted a passport visa if such visa was necessary, and to the bags of the mission, of the delegation or of the observer delegation in transit the same inviolability and protection as the host State is bound to accord under the present Convention.

5. The obligations of third States under paragraphs 1, 2, 3 and 4 of this article shall also apply to the persons mentioned respectively in those paragraphs and to the official communications and bags of the

mission, of the delegation or of the observer delegation when they are present in the territory of the third State owing to *force majeure*.

*Article 82. Non-recognition of States or governments or absence of diplomatic or consular relations*

1. The rights and obligations of the host State and of the sending State under the present Convention shall be affected neither by the non-recognition by one of those States of the other State or of its government nor by the non-existence or the severance of diplomatic or consular relations between them.

2. The establishment or maintenance of a mission, the sending or attendance of a delegation or of an observer delegation or any act in application of the present Convention shall not by itself imply recognition by the sending State of the host State or its government or by the host State of the sending State or its government.

*Article 83. Non-discrimination*

In the application of the provisions of the present Convention no discrimination shall be made as between States.

*Article 84. Consultations*

If a dispute between two or more States Parties arises out of the application or interpretation of the present Convention, consultations between them shall be held upon the request of any of them. At the request of any of the parties to the dispute, the Organization or the conference shall be invited to join in the consultations.

*Article 85. Conciliation*

1. If the dispute is not disposed of as a result of the consultations referred to in article 84 within one month from the date of their inception, any State participating in the consultations may bring the dispute before a conciliation commission constituted in accordance with the provisions of this article by giving written notice to the Organization and to the other States participating in the consultations.

2. Each conciliation commission shall be composed of three members: two members who shall be appointed respectively by each of the parties to the dispute, and a Chairman appointed in accordance with paragraph 3 of this article. Each State Party to the present Convention shall designate in advance a person to serve as a member of such a commission. It shall notify the designation to the Organization, which shall maintain a register of persons so designated. If it does not make the

designation in advance, it may do so during the conciliation procedure up to the moment at which the Commission begins to draft the report which it is to prepare in accordance with paragraph 7 of this article.

3. The Chairman of the Commission shall be chosen by the other two members. If the other two members are unable to agree within one month from the notice referred to in paragraph 1 of this article or if one of the parties to the dispute has not availed itself of its right to designate a member of the Commission, the Chairman shall be designated at the request of one of the parties to the dispute by the chief administrative officer of the Organization. The appointment shall be made within a period of one month from such request. The chief administrative officer of the Organization shall appoint as the Chairman a qualified jurist who is neither an official of the Organization nor a national of any State party to the dispute.

4. Any vacancy shall be filled in the manner prescribed for the initial appointment.

5. The Commission shall function as soon as the Chairman has been appointed even if its composition is incomplete.

6. The Commission shall establish its own rules of procedure and shall reach its decisions and recommendations by a majority vote. It may recommend to the Organization, if the Organization is so authorized in accordance with the Charter of the United Nations, to request an advisory opinion from the International Court of Justice regarding the application or interpretation of the present Convention.

7. If the Commission is unable to obtain an agreement among the parties to the dispute on a settlement of the dispute within two months from the appointment of its Chairman, it shall prepare as soon as possible a report of its proceedings and transmit it to the parties to the dispute. The report shall include the Commission's conclusions upon the facts and questions of law and the recommendations which it has submitted to the parties to the dispute in order to facilitate a settlement of the dispute. The two months time limit may be extended by decision of the Commission. The recommendations in the report of the Commission shall not be binding on the parties to the dispute unless all the parties to the dispute have accepted them. Nevertheless, any party to the dispute may declare unilaterally that it will abide by the recommendations in the report so far as it is concerned.

8. Nothing in the preceding paragraphs of this article shall preclude the establishment of any other appropriate procedure for the settlement of disputes arising out of the application or interpretation of the present Convention or the conclusion of any agreement between the

parties to the dispute to submit the dispute to a procedure instituted in the Organization or to any other procedure.

9. This article is without prejudice to provisions concerning the settlement of disputes contained in international agreements in force between States or between States and international organizations.

## PART VI. FINAL CLAUSES

### *Article 86. Signature*

The present Convention shall be open for signature by all States until 30 September 1975 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 30 March 1976, at United Nations Headquarters in New York.

### *Article 87. Ratification*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### *Article 88. Accession*

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### *Article 89. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

### *Article 90. Implementation by organizations*

After the entry into force of the present Convention, the competent organ of an international organization of a universal character may adopt a decision to implement the relevant provisions of the Convention. The Organization shall communicate the decision to the host State and to the depositary of the Convention.

*Article 91. Notifications by the depositary*

1. As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States:

(a) of signatures to the Convention and of the deposit of instruments of ratification or accession, in accordance with articles 86, 87 and 88;

(b) of the date on which the Convention will enter into force, in accordance with article 89;

(c) of any decision communicated in accordance with article 90.

2. The Secretary-General of the United Nations shall also inform all States, as necessary, of other acts, notifications or communications relating to the present Convention.

*Article 92. Authentic texts*

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna this fourteenth day of March, one thousand nine hundred and seventy-five.

**9. VIENNA CONVENTION ON SUCCESSION  
OF STATES IN RESPECT OF TREATIES**

VIENNA CONVENTION ON SUCCESSION OF STATES  
IN RESPECT OF TREATIES. DONE AT VIENNA,  
ON 23 AUGUST 1978\*

*The States Parties to the present Convention,*

*Considering the profound transformation of the international community brought about by the decolonization process,*

*Considering also that other factors may lead to cases of succession of States in the future,*

*Convinced, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States*

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\* Came into force on 6 November 1996. United Nations, *Treaty Series*, vol. 1946, p. 3.

in respect of treaties as a means for ensuring greater juridical security in international relations,

*Noting* that the principles of free consent, good faith and *pacta sunt servanda* are universally recognized,

*Emphasizing* that the consistent observance of general multilateral treaties which deal with the codification and progressive development of international law and those the object and purpose of which are of interest to the international community as a whole is of special importance for the strengthening of peace and international cooperation,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Recalling* that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

*Bearing in mind* the provisions of the Vienna Convention on the Law of Treaties of 1969,

*Bearing also in mind* article 73 of that Convention,

*Affirming* that questions of the law of treaties other than those that may arise from a succession of States are governed by the relevant rules of international law, including those rules of customary international law which are embodied in the Vienna Convention on the Law of Treaties of 1969,

*Affirming* that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

*Have agreed* as follows:

## PART I. GENERAL PROVISIONS

### *Article 1. Scope of the present Convention*

The present Convention applies to the effects of a succession of States in respect of treaties between States.

### *Article 2. Use of terms*

1. For the purposes of the present Convention:

(a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether

embodied in a single instrument or in two or more related instruments, and whatever its particular designation;

(b) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(c) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(d) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(e) "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(f) "newly independent State" means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible;

(g) "notification of succession" means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty;

(h) "full powers" means in relation to a notification of succession or any other notification under the present Convention a document emanating from the competent authority of a State designating a person or persons to represent the State for communicating the notification of succession or, as the case may be, the notification;

(i) "ratification," "acceptance" and "approval" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(j) "reservation" means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty or when making a notification of succession to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(k) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(l) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(m) "other State party" means in relation to a successor State any party, other than the predecessor State, to a treaty in force at the date of a succession of States in respect of the territory to which that succession of States relates;

(n) "international organization" means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

*Article 3. Cases not within the scope of the present Convention*

The fact that the present Convention does not apply to the effects of a succession of States in respect of international agreements concluded between States and other subjects of international law or in respect of international agreements not in written form shall not affect:

(a) the application to such cases of any of the rules set forth in the present Convention to which they are subject under international law independently of the Convention;

(b) the application as between States of the present Convention to the effects of a succession of States in respect of international agreements to which other subjects of international law are also parties.

*Article 4. Treaties constituting international organizations and treaties adopted within an international organization*

The present Convention applies to the effects of a succession of States in respect of:

(a) any treaty which is the constituent instrument of an international organization without prejudice to the rules concerning acquisition of membership and without prejudice to any other relevant rules of the organization;

(b) any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

*Article 5. Obligations imposed by international law independently of a treaty*

The fact that a treaty is not considered to be in force in respect of a State by virtue of the application of the present Convention shall not in any way impair the duty of that State to fulfil any obligation embodied in the treaty to which it is subject under international law independently of the treaty.

*Article 6. Cases of succession of States covered by the present Convention*

The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

*Article 7. Temporal application of the present Convention*

1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.

2. A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration, of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

*Article 8. Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State*

1. The obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State towards other States Parties to those treaties by reason only of the fact that the predecessor State and the successor State have concluded an agreement providing that such obligations or rights shall devolve upon the successor State.

2. Notwithstanding the conclusion of such an agreement, the effects of a succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

*Article 9. Unilateral declaration by a successor State regarding treaties of the predecessor State*

1. Obligations or rights under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State or of other States Parties to those treaties by reason only of the fact that the successor State has made a unilateral declaration providing for the continuance in force of the treaties in respect of its territory.

2. In such a case, the effects of the succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

*Article 10. Treaties providing for the participation of a successor State*

1. When a treaty provides that, on the occurrence of a succession of States, a successor State shall have the option to consider itself a party to the treaty, it may notify its succession in respect of the treaty in conformity with the provisions of the treaty or, failing any such provisions, in conformity with the provisions of the present Convention.

2. If a treaty provides that, on the occurrence of a succession of States, a successor State shall be considered as a party to the treaty, that provision takes effect as such only if the successor State expressly accepts in writing to be so considered.

3. In cases falling under paragraph 1 or 2, a successor State which establishes its consent to be a party to the treaty is considered as a party from the date of the succession of States unless the treaty otherwise provides or it is otherwise agreed.

*Article 11. Boundary regimes*

A succession of States does not as such affect:

- (a) a boundary established by a treaty; or
- (b) obligations and rights established by a treaty and relating to the regime of a boundary.

*Article 12. Other territorial regimes*

1. A succession of States does not as such affect:

- (a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question;

- (b) rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question.

2. A succession of States does not as such affect:

- (a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of a group of States or of all States and considered as attaching to that territory;

- (b) rights established by a treaty for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.

3. The provisions of the present article do not apply to treaty obligations of the predecessor State providing for the establishment of foreign military bases on the territory to which the succession of States relates.

*Article 13. The present Convention and permanent sovereignty over natural wealth and resources*

Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources.

*Article 14. Questions relating to the validity of a treaty*

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the validity of a treaty.

## PART II. SUCCESSION IN RESPECT OF PART OF TERRITORY

### *Article 15. Succession in respect of part of territory*

When part of the territory of a State, or when any territory for the international relations of which a State is responsible, not being part of the territory of that State, becomes part of the territory of another State:

- (a) treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and
- (b) treaties of the successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

## PART III. NEWLY INDEPENDENT STATES

### Section 1. General rule

#### *Article 16. Position in respect of the treaties of the predecessor State*

A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

### Section 2. Multilateral treaties

#### *Article 17. Participation in treaties in force at the date of the succession of States*

1. Subject to paragraphs 2 and 3, a newly independent State may, by a notification of succession, establish its status as a party to any multilateral treaty which at the date of the succession of States was in force in respect of the territory to which the succession of States relates.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the

treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties, the newly independent State may establish its status as a party to the treaty only with such consent.

*Article 18. Participation in treaties not in force at the date of the succession of States*

1. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a contracting State to a multilateral treaty which is not in force if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

2. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may establish its status as a party or as a contracting State to the treaty only with such consent.

5. When a treaty provides that a specified number of contracting States shall be necessary for its entry into force, a newly independent State which establishes its status as a contracting State to the treaty under paragraph 1 shall be counted as a contracting State for the purpose of that provision unless a different intention appears from the treaty, or is otherwise established.

*Article 19. Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval*

1. Subject to paragraphs 3 and 4, if before the date of the succession of States the predecessor State signed a multilateral treaty subject to ratification, acceptance or approval and by the signature intended that the treaty should extend to the territory to which the succession of

States relates, the newly independent State may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. For the purpose of paragraph 1, unless a different intention appears from the treaty or is otherwise established, the signature by the predecessor State of a treaty is considered to express the intention that the treaty should extend to the entire territory for the international relations of which the predecessor State was responsible.

3. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may become a party or a contracting State to the treaty only with such consent.

#### *Article 20. Reservations*

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession under article 17 or 18, it shall be considered as maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject matter as that reservation.

2. When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty under article 17 or 18, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraph (a), (b) or (c) of article 19 of the Vienna Convention on the Law of Treaties.

3. When a newly independent State formulates a reservation in conformity with paragraph 2, the rules set out in articles 20 to 23 of the Vienna Convention on the Law of Treaties apply in respect of that reservation.

*Article 21. Consent to be bound by part of a treaty and choice between differing provisions*

1. When making a notification of succession under article 17 or 18 establishing its status as a party or contracting State to a multilateral treaty, a newly independent State may, if the treaty so permits, express its consent to be bound by part of the treaty or make a choice between differing provisions under the conditions laid down in the treaty for expressing such consent or making such choice.

2. A newly independent State may also exercise, under the same conditions as the other parties or contracting States, any right provided for in the treaty to withdraw or modify any consent expressed or choice made by itself or by the predecessor State in respect of the territory to which the succession of States relates.

3. If the newly independent State does not in conformity with paragraph 1 express its consent or make a choice, or in conformity with paragraph 2 withdraw or modify the consent or choice of the predecessor State, it shall be considered as maintaining:

(a) the consent of the predecessor State, in conformity with the treaty, to be bound, in respect of the territory to which the succession of States relates, by part of that treaty; or

(b) the choice of the predecessor State, in conformity with the treaty, between differing provisions in the application of the treaty in respect of the territory to which the succession of States relates.

*Article 22. Notification of succession*

1. A notification of succession in respect of a multilateral treaty under article 17 or 18 shall be made in writing.

2. If the notification of succession is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification of succession shall:

(a) be transmitted by the newly independent State to the depositary, or, if there is no depositary, to the parties or the contracting States;

(b) be considered to be made by the newly independent State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification of succession or any communication made in connection therewith by the newly independent State.

5. Subject to the provisions of the treaty, the notification of succession or the communication made in connection therewith shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

#### *Article 23. Effects of a notification of succession*

1. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 17 or article 18, paragraph 2, shall be considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date.

2. Nevertheless, the operation of the treaty shall be considered as suspended as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession except insofar as that treaty may be applied provisionally in accordance with article 27 or as may be otherwise agreed.

3. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 18, paragraph 1, shall be considered a contracting State to the treaty from the date on which the notification of succession is made.

#### Section 3. Bilateral treaties

##### *Article 24. Conditions under which a treaty is considered as being in force in the case of a succession of States*

1. A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:

(a) they expressly so agree; or

(b) by reason of their conduct they are to be considered as having so agreed.

2. A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and the other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.

*Article 25. The position as between the predecessor State  
and the newly independent State*

A treaty which under article 24 is considered as being in force between a newly independent State and the other State party is not by reason only of that fact to be considered as being in force also in the relations between the predecessor State and the newly independent State.

*Article 26. Termination, suspension of operation  
or amendment of the treaty as between the predecessor  
State and the other State party*

1. When under article 24 a treaty is considered as being in force between a newly independent State and the other State party, the treaty:

(a) does not cease to be in force between them by reason only of the fact that it has subsequently been terminated as between the predecessor State and the other State party;

(b) is not suspended in operation as between them by reason only of the fact that it has subsequently been suspended in operation as between the predecessor State and the other State party;

(c) is not amended as between them by reason only of the fact that it has subsequently been amended as between the predecessor State and the other State party.

2. The fact that a treaty has been terminated or, as the case may be, suspended in operation as between the predecessor State and the other State party after the date of the succession of States does not prevent the treaty from being considered to be in force or, as the case may be, in operation as between the newly independent State and the other State party if it is established in accordance with article 24 that they so agreed.

3. The fact that a treaty has been amended as between the predecessor State and the other State party after the date of the succession of States does not prevent the unamended treaty from being considered to be in force under article 24 as between the newly independent State and the other State party, unless it is established that they intended the treaty as amended to apply between them.

Section 4. Provisional application

*Article 27. Multilateral treaties*

1. If, at the date of the succession of States, a multilateral treaty was in force in respect of the territory to which the succession of States

relates and the newly independent State gives notice of its intention that the treaty should be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

2. Nevertheless, in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, the consent of all the parties to such provisional application is required.

3. If, at the date of the succession of States, a multilateral treaty not yet in force was being applied provisionally in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should continue to be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

4. Nevertheless, in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, the consent of all the contracting States to such continued provisional application is required.

5. Paragraphs 1 to 4 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

#### *Article 28. Bilateral treaties*

A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned when:

- (a) they expressly so agree; or
- (b) by reason of their conduct they are to be considered as having so agreed.

#### *Article 29. Termination of provisional application*

1. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 may be terminated:

(a) by reasonable notice of termination given by the newly independent State or the party or contracting State provisionally applying the treaty and the expiration of the notice; or

(b) in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, by reasonable notice of termination given by the newly independent State or all of the parties or, as the case may be, all of the contracting States and the expiration of the notice.

2. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a bilateral treaty under article 28 may be terminated by reasonable notice of termination given by the newly independent State or the other State concerned and the expiration of the notice.

3. Unless the treaty provides for a shorter period for its termination or it is otherwise agreed, reasonable notice of termination shall be twelve months' notice from the date on which it is received by the other State or States provisionally applying the treaty.

4. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 shall be terminated if the newly independent State gives notice of its intention not to become a party to the treaty.

## Section 5. Newly independent states formed from two or more territories

### *Article 30. Newly independent States formed from two or more territories*

1. Articles 16 to 29 apply in the case of a newly independent State formed from two or more territories.

2. When a newly independent State formed from two or more territories is considered as or becomes a party to a treaty by virtue of article 17, 18 or 24 and at the date of the succession of States the treaty was in force, or consent to be bound had been given, in respect of one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of that State unless:

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(b) in the case of a multilateral treaty not falling under article 17, paragraph 3, or under article 18, paragraph 4, the notification of succession is restricted to the territory in respect of which the treaty was in

force at the date of the succession of States, or in respect of which consent to be bound by the treaty had been given prior to that date;

(c) in the case of a multilateral treaty falling under article 17, paragraph 3, or under article 18, paragraph 4, the newly independent State and the other States Parties or, as the case may be, the other contracting States otherwise agree; or

(d) in the case of a bilateral treaty, the newly independent State and the other State concerned otherwise agree.

3. When a newly independent State formed from two or more territories becomes a party to a multilateral treaty under article 19 and by the signature or signatures of the predecessor State or States it had been intended that the treaty should extend to one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of the newly independent State unless:

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(b) in the case of a multilateral treaty not falling under article 19, paragraph 4, the ratification, acceptance or approval of the treaty is restricted to the territory or territories to which it was intended that the treaty should extend; or

(c) in the case of a multilateral treaty falling under article 19, paragraph 4, the newly independent State and the other States Parties or, as the case may be, the other contracting States otherwise agree.

#### PART IV. UNITING AND SEPARATION OF STATES

##### *Article 31. Effects of a uniting of States in respect of treaties in force at the date of the succession of States*

1. When two or more States unite and so form one successor State, any treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State unless:

(a) the successor State and the other State party or States Parties otherwise agree; or

(b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

2. Any treaty continuing in force in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor

State in respect of which the treaty was in force at the date of the succession of States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State makes a notification that the treaty shall apply in respect of its entire territory;

(b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and the other States Parties otherwise agree; or

(c) in the case of a bilateral treaty, the successor State and the other State party otherwise agree.

3. Paragraph 2 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

*Article 32. Effects of a uniting of States in respect of treaties not in force at the date of the succession of States*

1. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, any of the predecessor States was a contracting State to the treaty.

2. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if, at that date, any of the predecessor States was a contracting State to the treaty.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

5. Any treaty to which the successor State becomes a contracting State or a party in conformity with paragraph 1 or 2 shall apply only in respect of the part of the territory of the successor State in respect of which consent to be bound by the treaty had been given prior to the date of the succession of States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State indicates in its notification made under paragraph 1 or 2 that the treaty shall apply in respect of its entire territory; or

(b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

6. Paragraph 5 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

*Article 33. Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval*

1. Subject to paragraphs 2 and 3, if before the date of the succession of States one of the predecessor States had signed a multilateral treaty subject to ratification, acceptance or approval, a successor State falling under article 31 may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

4. Any treaty to which the successor State becomes a party or a contracting State in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was signed by one of the predecessor States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State when ratifying, accepting or approving the treaty gives notice that the treaty shall apply in respect of its entire territory; or

(b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

5. Paragraph 4 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

*Article 34. Succession of States in cases of separation  
of parts of a State*

1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:

(a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;

(b) any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone.

2. Paragraph 1 does not apply if:

(a) the States concerned otherwise agree; or

(b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

*Article 35. Position if a State continues after separation  
of part of its territory*

When, after separation of any part of the territory of a State, the predecessor State continues to exist, any treaty which at the date of the succession of States was in force in respect of the predecessor State continues in force in respect of its remaining territory unless:

(a) the States concerned otherwise agree;

(b) it is established that the treaty related only to the territory which has separated from the predecessor State; or

(c) it appears from the treaty or is otherwise established that the application of the treaty in respect of the predecessor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

*Article 36. Participation in treaties not in force  
at the date of the succession of States in cases  
of separation of parts of a State*

1. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.
2. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.
3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.
4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

*Article 37. Participation in cases of separation of parts of a State  
in treaties signed by the predecessor State subject to  
ratification, acceptance or approval*

1. Subject to paragraphs 2 and 3, if before the date of the succession of States the predecessor State had signed a multilateral treaty subject to ratification, acceptance or approval and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates, a successor State falling under article 34, paragraph 1, may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.
2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.
3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a con-

tracting State to the treaty only with the consent of all the parties or of all the contracting States.

#### *Article 38. Notifications*

1. Any notification under articles 31, 32 or 36 shall be made in writing.
2. If the notification is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.
3. Unless the treaty otherwise provides, the notification shall:
  - (a) be transmitted by the successor State to the depositary, or, if there is no depositary, to the parties or the contracting States;
  - (b) be considered to be made by the successor State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.
4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification or any communication made in connection therewith by the successor State.
5. Subject to the provisions of the treaty, such notification or communication shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

### PART V. MISCELLANEOUS PROVISIONS

#### *Article 39. Cases of State responsibility and outbreak of hostilities*

The provisions of the present Convention shall not prejudge any question that may arise in regard to the effects of a succession of States in respect of a treaty from the international responsibility of a State or from the outbreak of hostilities between States.

#### *Article 40. Cases of military occupation*

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from the military occupation of a territory.

## PART VI. SETTLEMENT OF DISPUTES

### *Article 41. Consultation and negotiation*

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

### *Article 42. Conciliation*

If the dispute is not resolved within six months of the date on which the request referred to in article 41 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

### *Article 43. Judicial settlement and arbitration*

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 41 and 42, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

### *Article 44. Settlement by common consent*

Notwithstanding articles 41, 42 and 43, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

### *Article 45. Other provisions in force for the settlement of disputes*

Nothing in articles 41 to 44 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

## PART VII. FINAL PROVISIONS

### *Article 46. Signature*

The present Convention shall be open for signature by all States until 28 February 1979 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 31 August 1979, at United Nations Headquarters in New York.

### *Article 47. Ratification*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### *Article 48. Accession*

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### *Article 49. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

### *Article 50. Authentic texts*

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna this twenty-third day of August, one thousand nine hundred and seventy-eight.

## ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To

this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 42, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

## 10. VIENNA CONVENTION ON SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS

### VIENNA CONVENTION ON SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS.

DONE AT VIENNA, ON 8 APRIL 1983\*

*The States Parties to the present Convention,*

*Considering the profound transformation of the international community brought about by the decolonization process,*

*Considering also that other factors may lead to cases of succession of States in the future,*

*Convinced, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of State property, archives and debts as a means for ensuring greater juridical security in international relations,*

*Noting that the principles of free consent, good faith and *pacta sunt servanda* are universally recognized,*

*Emphasizing the importance of the codification and progressive development of international law which is of interest to the international community as a whole and of special importance for the strengthening of peace and international cooperation,*

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\* Not yet in force. See *Official Records of the United Nations Conference on Succession of States in Respect of State Property, Archives and Debts*, vol. II (United Nations publication, Sales No. E.94.V.6).

*Believing* that questions relating to succession of States in respect of State property, archives and debts are of special importance to all States,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Recalling* that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

*Bearing in mind* the provisions of the Vienna Convention on the Law of Treaties of 1969 and the Vienna Convention on Succession of States in Respect of Treaties of 1978,

*Affirming* that matters not regulated by the present Convention continue to be governed by the rules and principles of general international law,

*Have agreed* as follows:

## PART I. GENERAL PROVISIONS

### *Article 1. Scope of the present Convention*

The present Convention applies to the effects of a succession of States in respect of State property, archives and debts.

### *Article 2. Use of terms*

1. For the purposes of the present Convention:

(a) “succession of States” means the replacement of one State by another in the responsibility for the international relations of territory;

(b) “predecessor State” means the State which has been replaced by another State on the occurrence of a succession of States;

(c) “successor State” means the State which has replaced another State on the occurrence of a succession of States;

(d) “date of the succession of States” means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(e) “newly independent State” means a successor State the territory of which, immediately before the date of the succession of States,

was a dependent territory for the international relations of which the predecessor State was responsible;

(f) “third State” means any State other than the predecessor State or the successor State.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

*Article 3. Cases of succession of States covered by the present Convention*

The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

*Article 4. Temporal application of the present Convention*

1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.

2. A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provi-

sions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

*Article 5. Succession in respect of other matters*

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the effects of a succession of States in respect of matters other than those provided for in the present Convention.

*Article 6. Rights and obligations of natural or juridical persons*

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the rights and obligations of natural or juridical persons.

## PART II. STATE PROPERTY

### Section 1. Introduction

*Article 7. Scope of the present Part*

The articles in the present Part apply to the effects of a succession of States in respect of State property of the predecessor State.

*Article 8. State property*

For the purposes of the articles in the present Part, "State property of the predecessor State" means property, rights and interests which, at the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State.

*Article 9. Effects of the passing of State property*

The passing of State property of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State property which passes to the successor State, subject to the provisions of the articles in the present Part.

*Article 10. Date of the passing of State property*

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State property of the predecessor State is that of the succession of States.

*Article 11. Passing of State property without compensation*

Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body, the passing of State property of the predecessor State to the successor State shall take place without compensation.

*Article 12. Absence of effect of a succession of States on the property of a third State*

A succession of States shall not as such affect property, rights and interests which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

*Article 13. Preservation and safety of State property*

For the purpose of the implementation of the provisions of the articles in the present Part, the predecessor State shall take all measures to prevent damage or destruction to State property which passes to the successor State in accordance with those provisions.

## Section 2. Provisions concerning specific categories of succession of States

*Article 14. Transfer of part of the territory of a State*

1. When part of the territory of a State is transferred by that State to another State, the passing of State property of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State.

*Article 15. Newly independent State*

1. When the successor State is a newly independent State:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) immovable property, having belonged to the territory to which the succession of States relates, situated outside it and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

(c) immovable State property of the predecessor State other than that mentioned in subparagraph (b) and situated outside the territory to which the succession of States relates, to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory;

(d) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

(e) movable property, having belonged to the territory to which the succession of States relates and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

(f) movable State property of the predecessor State, other than the property mentioned in subparagraphs (d) and (e), to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory.

2. When a newly independent State is formed from two or more dependent territories, the passing of the State property of the predecessor State or States to the newly independent State shall be determined in accordance with the provisions of paragraph 1.

3. When a dependent territory becomes part of the territory of a State, other than the State which was responsible for its international relations, the passing of the State property of the predecessor State to the successor State shall be determined in accordance with the provisions of paragraph 1.

4. Agreements concluded between the predecessor State and the newly independent State to determine succession to State property of the predecessor State otherwise than by the application of paragraphs 1 to 3 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources.

*Article 16. Uniting of States*

When two or more States unite and so form one successor State, the State property of the predecessor States shall pass to the successor State.

*Article 17. Separation of part or parts of the territory of a State*

1. When part or parts of the territory of a State separate from that State and form a successor State, and unless the predecessor State and the successor State otherwise agree:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

(c) movable State property of the predecessor State, other than that mentioned in subparagraph (b), shall pass to the successor State in an equitable proportion.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

3. The provisions of paragraphs 1 and 2 are without prejudice to any question of equitable compensation as between the predecessor State and the successor State that may arise as a result of a succession of States.

*Article 18. Dissolution of a State*

1. When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States concerned otherwise agree:

(a) immovable State property of the predecessor State shall pass to the successor State in the territory of which it is situated;

(b) immovable State property of the predecessor State situated outside its territory shall pass to the successor States in equitable proportions;

(c) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territories to which the succession of States relates shall pass to the successor State concerned;

(d) movable State property of the predecessor State, other than that mentioned in subparagraph (c), shall pass to the successor States in equitable proportions.

2. The provisions of paragraph 1 are without prejudice to any question of equitable compensation among the successor States that may arise as a result of a succession of States.

### PART III. STATE ARCHIVES

#### Section 1. Introduction

##### *Article 19. Scope of the present Part*

The articles in the present Part apply to the effects of a succession of States in respect of State archives of the predecessor State.

##### *Article 20. State archives*

For the purposes of the articles in the present Part, "State archives of the predecessor State" means all documents of whatever date and kind, produced or received by the predecessor State in the exercise of its functions which, at the date of the succession of States, belonged to the predecessor State according to its internal law and were preserved by it directly or under its control as archives for whatever purpose.

##### *Article 21. Effects of the passing of State archives*

The passing of State archives of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State archives which pass to the successor State, subject to the provisions of the articles in the present Part.

##### *Article 22. Date of the passing of State archives*

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State archives of the predecessor State is that of the succession of States.

##### *Article 23. Passing of State archives without compensation*

Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body, the passing of State archives of the predecessor State to the successor State shall take place without compensation.

*Article 24. Absence of effect of a succession of States on the archives of a third State*

A succession of States shall not as such affect archives which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

*Article 25. Preservation of the integral character of groups of State archives*

Nothing in the present Part shall be considered as prejudging in any respect any question that might arise by reason of the preservation of the integral character of groups of State archives of the predecessor State.

*Article 26. Preservation and safety of State archives*

For the purpose of the implementation of the provisions of the articles in the present Part, the predecessor State shall take all measures to prevent damage or destruction to State archives which pass to the successor State in accordance with those provisions.

**Section 2. Provisions concerning specific categories of succession of States**

*Article 27. Transfer of part of the territory of a State*

1. When part of the territory of a State is transferred by that State to another State, the passing of State archives of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement:

(a) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be at the disposal of the State to which the territory concerned is transferred, shall pass to the successor State;

(b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the successor State.

3. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the transferred territory or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the

predecessor State which pass to the successor State pursuant to other provisions of the present article.

4. The predecessor State shall make available to the successor State, at the request and at the expense of that State, appropriate reproductions of its State archives connected with the interests of the transferred territory.

5. The successor State shall make available to the predecessor State, at the request and at the expense of that State, appropriate reproductions of State archives of the predecessor State which have passed to the successor State in accordance with paragraph 1 or 2.

#### *Article 28. Newly independent State*

1. When the successor State is a newly independent State:

(a) archives having belonged to the territory to which the succession of States relates and having become State archives of the predecessor State during the period of dependence shall pass to the newly independent State;

(b) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the newly independent State;

(c) the part of State archives of the predecessor State, other than the parts mentioned in subparagraphs (a) and (b), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the newly independent State.

2. The passing or the appropriate reproduction of parts of the State archives of the predecessor State, other than those mentioned in paragraph 1, of interest to the territory to which the succession of States relates, shall be determined by agreement between the predecessor State and the newly independent State in such a manner that each of those States can benefit as widely and equitably as possible from those parts of the State archives of the predecessor State.

3. The predecessor State shall provide the newly independent State with the best available evidence from its State archives which bears upon title to the territory of the newly independent State or its boundaries, or which is necessary to clarify the meaning of documents of States archives of the predecessor State which pass to the newly independent State pursuant to other provisions of the present article.

4. The predecessor State shall cooperate with the successor State in efforts to recover any archives which, having belonged to the terri-

tory to which the succession of States relates, were dispersed during the period of dependence.

5. Paragraphs 1 to 4 apply when a newly independent State is formed from two or more dependent territories.

6. Paragraphs 1 to 4 apply when a dependent territory becomes part of the territory of a State other than the State which was responsible for its international relations.

7. Agreements concluded between the predecessor State and the newly independent State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history, and to their cultural heritage.

#### *Article 29. Uniting of States*

When two or more States unite and so form one successor State, the State archives of the predecessor States shall pass to the successor State.

#### *Article 30. Separation of part or parts of the territory of a State*

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree:

(a) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the successor State;

(b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory to which the succession of States relates, shall pass to the successor State.

2. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the successor State or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the successor State pursuant to other provisions of the present article.

3. Agreements concluded between the predecessor State and the successor State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

4. The predecessor and successor States shall, at the request and at the expense of one of them or on an exchange basis, make available appropriate reproductions of their State archives connected with the interests of their respective territories.

5. The provisions of paragraphs 1 to 4 apply when part of the territory of a State separates from that State and unites with another State.

*Article 31. Dissolution of a State*

1. When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States concerned otherwise agree:

(a) the part of the State archives of the predecessor State which should be in the territory of a successor State for normal administration of its territory shall pass to that successor State;

(b) the part of the State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory of a successor State shall pass to that successor State.

2. The State archives of the predecessor State other than those mentioned in paragraph 1 shall pass to the successor States in an equitable manner, taking into account all relevant circumstances.

3. Each successor State shall provide the other successor State or States with the best available evidence from its part of the State archives of the predecessor State which bears upon title to the territories or boundaries of that other successor State or States, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to that State or States pursuant to other provisions of the present article.

4. Agreements concluded between the successor States concerned in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

5. Each successor State shall make available to any other successor State, at the request and at the expense of that State or on an exchange basis, appropriate reproductions of its part of the State archives of the predecessor State connected with the interests of the territory of that other successor State.

PART IV. STATE DEBTS

Section 1. Introduction

*Article 32. Scope of the present Part*

The articles in the present Part apply to the effects of a succession of States in respect of State debts.

*Article 33. State debt*

For the purposes of the articles in the present Part, "State debt" means any financial obligation of a predecessor State arising in conformity with international law towards another State, an international organization or any other subject of international law.

*Article 34. Effects of the passing of State debts*

The passing of State debts entails the extinction of the obligations of the predecessor State and the arising of the obligations of the successor State in respect of the State debts which pass to the successor State, subject to the provisions of the articles in the present Part.

*Article 35. Date of the passing of State debts*

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State debts of the predecessor State is that of the succession of States.

*Article 36. Absence of effect of a succession of States on creditors*

A succession of States does not as such affect the rights and obligations of creditors.

## Section 2. Provisions concerning specific categories of succession of States

*Article 37. Transfer of part of the territory of a State*

1. When part of the territory of a State is transferred by that State to another State, the passing of the State debt of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to that State debt.

*Article 38. Newly independent State*

1. When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State, unless an agreement between them provides otherwise in view of the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and

the property, rights and interests which pass to the newly independent State.

2. The agreement referred to in paragraph 1 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor shall its implementation endanger the fundamental economic equilibria of the newly independent State.

#### *Article 39. Uniting of States*

When two or more States unite and so form one successor State, the State debt of the predecessor States shall pass to the successor State.

#### *Article 40. Separation of part or parts of the territory of a State*

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to that State debt.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

#### *Article 41. Dissolution of a State*

When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States otherwise agree, the State debt of the predecessor State shall pass to the successor States in equitable proportions, taking into account, in particular, the property, rights and interests which pass to the successor States in relation to that State debt.

### PART V. SETTLEMENT OF DISPUTES

#### *Article 42. Consultation and negotiation*

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

#### *Article 43. Conciliation*

If the dispute is not resolved within six months of the date on which the request referred to in article 42 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex

to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

*Article 44. Judicial settlement and arbitration*

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 42 and 43, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

*Article 45. Settlement by common consent*

Notwithstanding articles 42, 43 and 44, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

*Article 46. Other provisions in force for the settlement of disputes*

Nothing in articles 42 to 45 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

## PART VI. FINAL PROVISIONS

*Article 47. Signature*

The present Convention shall be open for signature by all States until 31 December 1983 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 June 1984, at United Nations Headquarters in New York.

*Article 48. Ratification*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article 49. Accession*

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 50. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article 51. Authentic texts*

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this eighth day of April, one thousand nine hundred and eighty-three.

## ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 43, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the con-

sideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

## 11. VIENNA CONVENTION ON THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL ORGANIZATIONS

**VIENNA CONVENTION ON THE LAW OF TREATIES BETWEEN STATES  
AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL  
ORGANIZATIONS. DONE AT VIENNA, ON 21 MARCH 1986\***

*The Parties to the present Convention,*

*Considering* the fundamental role of treaties in the history of international relations,

*Recognizing* the consensual nature of treaties and their ever-increasing importance as a source of international law,

*Noting* that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized,

*Affirming* the importance of enhancing the process of codification and progressive development of international law at a universal level,

*Believing* that the codification and progressive development of the rules relating to treaties between States and international organizations or between international organizations are means of enhancing legal order in international relations and of serving the purposes of the United Nations,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Bearing in mind* the provisions of the Vienna Convention on the Law of Treaties of 1969,

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\* Not yet in force. See *Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations*, vol. II (United Nations publication, Sales No. E.94.V.5).

*Recognizing* the relationship between the law of treaties between States and the law of treaties between States and international organizations or between international organizations,

*Considering* the importance of treaties between States and international organizations or between international organizations as a useful means of developing international relations and ensuring conditions for peaceful cooperation among nations, whatever their constitutional and social systems,

*Having in mind* the specific features of treaties to which international organizations are parties as subjects of international law distinct from States,

*Noting* that international organizations possess the capacity to conclude treaties, which is necessary for the exercise of their functions and the fulfilment of their purposes,

*Recognizing* that the practice of international organizations in concluding treaties with States or between themselves should be in accordance with their constituent instruments,

*Affirming* that nothing in the present Convention should be interpreted as affecting those relations between an international organization and its members which are regulated by the rules of the organization,

*Affirming* also that disputes concerning treaties, like other international disputes, should be settled, in conformity with the Charter of the United Nations, by peaceful means and in conformity with the principles of justice and international law,

*Affirming* also that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

*Have agreed* as follows:

## PART I. INTRODUCTION

### *Article 1. Scope of the present Convention*

The present Convention applies to:

- (a) treaties between one or more States and one or more international organizations, and
- (b) treaties between international organizations.

### *Article 2. Use of terms*

1. For the purposes of the present Convention:

- (a) “treaty” means an international agreement governed by international law and concluded in written form;

- (i) between one or more States and one or more international organizations; or
- (ii) between international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) "ratification" means the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(b bis) "act of formal confirmation" means an international act corresponding to that of ratification by a State, whereby an international organization establishes on the international plane its consent to be bound by a treaty;

(b ter) "acceptance," "approval" and "accession" mean in each case the international act so named whereby a State or an international organization establishes on the international plane its consent to be bound by a treaty;

(c) "full powers" means a document emanating from the competent authority of a State or from the competent organ of an international organization designating a person or persons to represent the State or the organization for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State or of the organization to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(d) "reservation" means a unilateral statement, however phrased or named, made by a State or by an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that organization;

(e) "negotiating State" and "negotiating organization" mean respectively:

- (i) a State, or
- (ii) an international organization,

which took part in the drawing up and adoption of the text of the treaty;

(f) "contracting State" and "contracting organization" mean respectively:

- (i) a State, or
- (ii) an international organization,

which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(g) "party" means a State or an international organization which has consented to be bound by the treaty and for which the treaty is in force;

(h) "third State" and "third organization" mean respectively:

- (i) a State, or
- (ii) an international organization,

not a party to the treaty;

(i) "international organization" means an intergovernmental organization;

(j) "rules of the organization" means, in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State or in the rules of any international organization.

*Article 3. International agreements not within the scope of the present Convention*

The fact that the present Convention does not apply:

- (i) to international agreements to which one or more States, one or more international organizations and one or more subjects of international law other than States or organizations are parties;
- (ii) to international agreements to which one or more international organizations and one or more subjects of international law other than States or organizations are parties;
- (iii) to international agreements not in written form between one or more States and one or more international organizations, or between international organizations; or
- (iv) to international agreements between subjects of international law other than States or international organizations;

shall not affect:

- (a) the legal force of such agreements;
- (b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

(c) the application of the Convention to the relations between States and international organizations or to the relations of organizations as between themselves, when those relations are governed by international agreements to which other subjects of international law are also parties.

*Article 4. Non-retroactivity of the present Convention*

Without prejudice to the application of any rules set forth in the present Convention to which treaties between one or more States and one or more international organizations or between international organizations would be subject under international law independently of the Convention, the Convention applies only to such treaties concluded after the entry into force of the present Convention with regard to those States and those organizations.

*Article 5. Treaties constituting international organizations and treaties adopted within an international organization*

The present Convention applies to any treaty between one or more States and one or more international organizations which is the constituent instrument of an international organization and to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

PART II. CONCLUSION AND ENTRY INTO FORCE OF TREATIES

Section 1. Conclusion of treaties

*Article 6. Capacity of international organizations to conclude treaties*

The capacity of an international organization to conclude treaties is governed by the rules of that organization.

*Article 7. Full powers*

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(a) that person produces appropriate full powers; or

(b) it appears from practice or from other circumstances that it was the intention of the States and international organizations concerned to consider that person as representing the State for such purposes without having to produce full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty between one or more States and one or more international organizations;

(b) representatives accredited by States to an international conference, for the purpose of adopting the text of a treaty between States and international organizations;

(c) representatives accredited by States to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that organization or organ;

(d) heads of permanent missions to an international organization, for the purpose of adopting the text of a treaty between the accrediting States and that organization.

3. A person is considered as representing an international organization for the purpose of adopting or authenticating the text of a treaty, or expressing the consent of that organization to be bound by a treaty, if:

(a) that person produces appropriate full powers; or

(b) it appears from the circumstances that it was the intention of the States and international organizations concerned to consider that person as representing the organization for such purposes, in accordance with the rules of the organization, without having to produce full powers.

*Article 8. Subsequent confirmation of an act performed without authorization*

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State or an international organization for that purpose is without legal effect unless afterwards confirmed by that State or that organization.

*Article 9. Adoption of the text*

1. The adoption of the text of a treaty takes place by the consent of all the States and international organizations or, as the case may be, all the organizations participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international conference takes place in accordance with the procedure agreed upon by the participants in that conference. If, however, no agreement is reached on

any such procedure, the adoption of the text shall take place by the vote of two thirds of the participants present and voting unless by the same majority they shall decide to apply a different rule.

*Article 10. Authentication of the text*

1. The text of a treaty between one or more States and one or more international organizations is established as authentic and definitive:

(a) by such procedure as may be provided for in the text or agreed upon by the States and organizations participating in its drawing up; or

(b) failing such procedure, by the signature, signature *ad referendum* or initialling by the representatives of those States and those organizations of the text of the treaty or of the Final Act of a conference incorporating the text.

2. The text of a treaty between international organizations is established as authentic and definitive:

(a) by such procedure as may be provided for in the text or agreed upon by the organizations participating in its drawing up; or

(b) failing such procedure, by the signature, signature *ad referendum* or initialling by the representatives of those States and those organizations of the text of the treaty or of the Final Act of a conference incorporating the text.

*Article 11. Means of expressing consent to be bound by a treaty*

1. The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

2. The consent of an international organization to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, act of formal confirmation, acceptance, approval or accession, or by any other means if so agreed.

*Article 12. Consent to be bound by a treaty expressed by signature*

1. The consent of a State or of an international organization to be bound by a treaty is expressed by the signature of the representative of that State or of that organization when:

(a) the treaty provides that signature shall have that effect;

(b) it is otherwise established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations were agreed that signature should have that effect; or

(c) the intention of the State or organization to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

(a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations so agreed;

(b) the signature *ad referendum* of a treaty by the representative of a State or an international organization, if confirmed by his State or organization, constitutes a full signature of the treaty.

*Article 13. Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty*

The consent of States or of international organizations to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(a) the instruments provide that their exchange shall have that effect; or

(b) it is otherwise established that those States and those organizations or, as the case may be, those organizations were agreed that the exchange of instruments should have that effect.

*Article 14. Consent to be bound by a treaty expressed by ratification, act of formal confirmation, acceptance or approval*

1. The consent of a State to be bound by a treaty is expressed by ratification when:

(a) the treaty provides for such consent to be expressed by means of ratification;

(b) it is otherwise established that the negotiating States and negotiating organizations were agreed that ratification should be required;

(c) the representative of the State has signed the treaty subject to ratification; or

(d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of an international organization to be bound by a treaty is expressed by an act of formal confirmation when:

(a) the treaty provides for such consent to be expressed by means of an act of formal confirmation;

(b) it is otherwise established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations were agreed that an act of formal confirmation should be required;

(c) the representative of the organization has signed the treaty subject to an act of formal confirmation; or

(d) the intention of the organization to sign the treaty subject to an act of formal confirmation appears from the full powers of its representative or was expressed during the negotiation.

3. The consent of a State or of an international organization to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification or, as the case may be, to an act of formal confirmation.

*Article 15. Consent to be bound by a treaty expressed by accession*

The consent of a State or of an international organization to be bound by a treaty is expressed by accession when:

(a) the treaty provides that such consent may be expressed by that State or that organization by means of accession;

(b) it is otherwise established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations were agreed that such consent may be expressed by that State or that organization by means of accession; or

(c) all the parties have subsequently agreed that such consent may be expressed by that State or that organization by means of accession.

*Article 16. Exchange or deposit of instruments of ratification, formal confirmation, acceptance, approval or accession*

1. Unless the treaty otherwise provides, instruments of ratification, instruments relating to an act of formal confirmation or instruments of acceptance, approval or accession establish the consent of a State or of an international organization to be bound by a treaty between one or more States and one or more international organizations upon:

(a) their exchange between the contracting States and contracting organizations;

(b) their deposit with the depositary; or

(c) their notification to the contracting States and to the contracting organizations or to the depositary, if so agreed.

2. Unless the treaty otherwise provides, instruments relating to an act of formal confirmation or instruments of acceptance, approval or accession establish the consent of an international organization to be bound by a treaty between international organizations upon:

- (a) their exchange between the contracting organizations;
- (b) their deposit with the depositary; or
- (c) their notification to the contracting organizations or to the depositary, if so agreed.

*Article 17. Consent to be bound by part of a treaty and choice of differing provisions*

1. Without prejudice to articles 19 to 23, the consent of a State or of an international organization to be bound by part of a treaty is effective only if the treaty so permits, or if the contracting States and contracting organizations or, as the case may be, the contracting organizations so agree.

2. The consent of a State or of an international organization to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

*Article 18. Obligation not to defeat the object and purpose of a treaty prior to its entry into force*

A State or an international organization is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) that State or that organization has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, act of formal confirmation, acceptance or approval, until that State or that organization shall have made its intention clear not to become a party to the treaty; or

(b) that State or that organization has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

## Section 2. Reservations

*Article 19. Formulation of reservations*

A State or an international organization may, when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, formulate a reservation unless:

- (a) the reservation is prohibited by the treaty;
- (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

*Article 20. Acceptance of and objection to reservations*

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the contracting States and contracting organizations or, as the case may be, by the contracting organizations unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and negotiating organizations or, as the case may be, of the negotiating organizations and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance of a reservation by a contracting State or by a contracting organization constitutes the reserving State or international organization a party to the treaty in relation to the accepting State or organization if or when the treaty is in force for the reserving State or organization and for the accepting State or organization;

(b) an objection by a contracting State or by a contracting organization to a reservation does not preclude the entry into force of the treaty as between the objecting State or international organization and the reserving State or organization unless a contrary intention is definitely expressed by the objecting State or organization;

(c) an act expressing the consent of a State or of an international organization to be bound by the treaty and containing a reservation is effective as soon as at least one contracting State or one contracting organization has accepted the reservation.

5. For the purposes of paragraphs 2 and 4, and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State or an international organization if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

*Article 21. Legal effects of reservations and of objections to reservations*

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State or international organization in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State or international organization.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a State or an international organization objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State or organization, the provisions to which the reservation relates do not apply as between the reserving State or organization and the objecting State or organization to the extent of the reservation.

#### *Article 22. Withdrawal of reservations and of objections to reservations*

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State or of an international organization which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to a contracting State or a contracting organization only when notice of it has been received by that State or that organization;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State or international organization which formulated the reservation.

#### *Article 23. Procedure regarding reservations*

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, act of formal confirmation, acceptance or approval, a reservation must be formally confirmed by the reserving State or international organization when expressing its consent to be bound by the treaty. In such a case the

reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

### Section 3. Entry into force and provisional application of treaties

#### *Article 24. Entry into force*

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States and negotiating organizations or, as the case may be, all the negotiating organizations.

3. When the consent of a State or of an international organization to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State or that organization on that date, unless the treaty otherwise provides.

4. The provisions of a treaty regulating the authentication of its text, the establishment of consent to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

#### *Article 25. Provisional application*

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(a) the treaty itself so provides; or  
 (b) the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State or an international organization shall be terminated if that State or that organization noti-

fies the States and organizations with regard to which the treaty is being applied provisionally of its intention not to become a party to the treaty.

### PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

#### Section 1. Observance of treaties

##### *Article 26. Pacta sunt servanda*

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

##### *Article 27. Internal law of States, rules of international organizations and observance of treaties*

1. A State party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform the treaty.
2. An international organization party to a treaty may not invoke the rules of the organization as justification for its failure to perform the treaty.
3. The rules contained in the preceding paragraphs are without prejudice to article 46.

#### Section 2. Application of treaties

##### *Article 28. Non-retroactivity of treaties*

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

##### *Article 29. Territorial scope of treaties*

Unless a different intention appears from the treaty or is otherwise established, a treaty between one or more States and one or more international organizations is binding upon each State party in respect of its entire territory.

##### *Article 30. Application of successive treaties relating to the same subject matter*

1. The rights and obligations of States and international organizations parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(a) as between two parties, each of which is a party to both treaties, the same rule applies as in paragraph 3;

(b) as between a party to both treaties and a party to only one of the treaties, the treaty to which both are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State or for an international organization from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards a State or an organization under another treaty.

6. The preceding paragraphs are without prejudice to the fact that, in the event of a conflict between obligations under the Charter of the United Nations and obligations under a treaty, the obligations under the Charter shall prevail.

### Section 3. Interpretation of treaties

#### *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 connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection 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.

*Article 33. Interpretation of treaties authenticated in two or more languages*

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of a treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

**Section 4. Treaties and third States or third organizations**

*Article 34. General rule regarding third States and third organizations*

A treaty does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization.

*Article 35. Treaties providing for obligations for third States or third organizations*

An obligation arises for a third State or a third organization from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State or the third organization expressly accepts that obligation in writing. Acceptance by the third organization of such an obligation shall be governed by the rules of that organization.

*Article 36. Treaties providing for rights for third States or third organizations*

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A right arises for a third organization from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third organization, or to a group of international organizations to which it belongs, or to all organizations, and the third organization assents thereto. Its assent shall be governed by the rules of the organization.

3. A State or an international organization exercising a right in accordance with paragraph 1 or 2 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

*Article 37. Revocation or modification of obligations or rights of third States or third organizations*

1. When an obligation has arisen for a third State or a third organization in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State or the third organization, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State or a third organization in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State or the third organization.

3. The consent of an international organization party to the treaty or of a third organization, as provided for in the foregoing paragraphs, shall be governed by the rules of that organization.

*Article 38. Rules in a treaty becoming binding on third States or third organizations through international custom*

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State or a third organization as a customary rule of international law, recognized as such.

**PART IV. AMENDMENT AND MODIFICATION OF TREATIES**

*Article 39. General rule regarding the amendment of treaties*

1. A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide.

2. The consent of an international organization to an agreement provided for in paragraph 1 shall be governed by the rules of that organization.

*Article 40. Amendment of multilateral treaties*

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States and all the contracting organizations, each one of which shall have the right to take part in:

(a) the decision as to the action to be taken in regard to such proposal;

(b) the negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State or international organization entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State or international organization already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (b), applies in relation to such State or organization.

5. Any State or international organization which becomes a party to the treaty after the entry into force of the amending agreement shall,

failing an expression of a different intention by that State or that organization:

- (a) be considered as a party to the treaty as amended; and
- (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

*Article 41. Agreements to modify multilateral treaties between certain of the parties only*

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

- (a) the possibility of such a modification is provided for by the treaty; or
- (b) the modification in question is not prohibited by the treaty and:
  - (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
  - (ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

**PART V. INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES**

**Section 1. General provisions**

*Article 42. Validity and continuance in force of treaties*

1. The validity of a treaty or of the consent of a State or an international organization to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

*Article 43. Obligations imposed by international law independently of a treaty*

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State or of any international organization to fulfil any obligation embodied in the treaty to which that State or that organization would be subject under international law independently of the treaty.

*Article 44. Separability of treaty provisions*

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

(a) the said clauses are separable from the remainder of the treaty with regard to their application;

(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(c) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50, the State or international organization entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

*Article 45. Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty*

1. A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty

under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

- (a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or
- (b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

2. An international organization may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

- (a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or
- (b) it must by reason of the conduct of the competent organ be considered as having renounced the right to invoke that ground.

## Section 2. Invalidity of treaties

### *Article 46. Provisions of internal law of a State and rules of an international organization regarding competence to conclude treaties*

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. An international organization may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of the rules of the organization regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of fundamental importance.

3. A violation is manifest if it would be objectively evident to any State or any international organization conducting itself in the matter in accordance with the normal practice of States and, where appropriate, of international organizations and in good faith.

### *Article 47. Specific restrictions on authority to express the consent of a State or an international organization*

If the authority of a representative to express the consent of a State or of an international organization to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed

by him unless the restriction was notified to the negotiating States and negotiating organizations prior to his expressing such consent.

*Article 48. Error*

1. A State or an international organization may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State or that organization to exist at the time when the treaty was concluded and formed an essential basis of the consent of that State or that organization to be bound by the treaty.

2. Paragraph 1 shall not apply if the State or international organization in question contributed by its own conduct to the error or if the circumstances were such as to put that State or that organization on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 80 then applies.

*Article 49. Fraud*

A State or an international organization induced to conclude a treaty by the fraudulent conduct of a negotiating State or a negotiating organization may invoke the fraud as invalidating its consent to be bound by the treaty.

*Article 50. Corruption of a representative of a State or of an international organization*

A State or an international organization the expression of whose consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by a negotiating State or a negotiating organization may invoke such corruption as invalidating its consent to be bound by the treaty.

*Article 51. Coercion of a representative of a State or of an international organization*

The expression by a State or an international organization of consent to be bound by a treaty which has been procured by the coercion of the representative of that State or that organization through acts or threats directed against him shall be without any legal effect.

*Article 52. Coercion of a State or of an international organization by the threat or use of force*

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

*Article 53. Treaties conflicting with a peremptory norm of general international law (jus cogens)*

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

**Section 3. Termination and suspension of the operation of treaties**

*Article 54. Termination of or withdrawal from a treaty under its provisions or by consent of the parties*

The termination of a treaty or the withdrawal of a party may take place:

- (a) in conformity with the provisions of the treaty; or
- (b) at any time by consent of all the parties after consultation with the contracting States and contracting organizations.

*Article 55. Reduction of the parties to a multilateral treaty below the number necessary for its entry into force*

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

*Article 56. Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal*

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

- (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

*Article 57. Suspension of the operation of a treaty under its provisions or by consent of the parties*

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

- (a) in conformity with the provisions of the treaty; or
- (b) at any time by consent of all the parties after consultation with the contracting States and contracting organizations.

*Article 58. Suspension of the operation of a multilateral treaty by agreement between certain of the parties only*

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

- (a) the possibility of such a suspension is provided for by the treaty; or
- (b) the suspension in question is not prohibited by the treaty and:
  - (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
  - (ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

*Article 59. Termination or suspension of the operation of a treaty implied by conclusion of a later treaty*

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:

- (a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

*Article 60. Termination or suspension of the operation of a treaty as a consequence of its breach*

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) in the relations between themselves and the defaulting State or international organization; or

(ii) as between all the parties;

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State or international organization;

(c) any party other than the defaulting State or international organization to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

*Article 61. Supervening impossibility of performance*

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

*Article 62. Fundamental change of circumstances*

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty between two or more States and one or more international organizations if the treaty establishes a boundary.

3. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

4. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

*Article 63. Severance of diplomatic or consular relations*

The severance of diplomatic or consular relations between States Parties to a treaty between two or more States and one or more international organizations does not affect the legal relations established between those States by the treaty except insofar as the existence of dip-

lomatic or consular relations is indispensable for the application of the treaty.

*Article 64. Emergence of a new peremptory norm of general international law (jus cogens)*

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

Section 4. Procedure

*Article 65. Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty*

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. The notification or objection made by an international organization shall be governed by the rules of that organization.

5. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

6. Without prejudice to article 45, the fact that a State or an international organization has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

*Article 66. Procedures for judicial settlement,  
arbitration and conciliation*

1. If, under paragraph 3 of article 65, no solution has been reached within a period of twelve months following the date on which the objection was raised, the procedures specified in the following paragraphs shall be followed.

2. With respect to a dispute concerning the application or the interpretation of article 53 or 64:

(a) if a State is a party to the dispute with one or more States, it may, by a written application, submit the dispute to the International Court of Justice for a decision;

(b) if a State is a party to the dispute to which one or more international organizations are parties, the State may, through a Member State of the United Nations if necessary, request the General Assembly or the Security Council or, where appropriate, the competent organ of an international organization which is a party to the dispute and is authorized in accordance with Article 96 of the Charter of the United Nations, to request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court;

(c) if the United Nations or an international organization that is authorized in accordance with Article 96 of the Charter of the United Nations is a party to the dispute, it may request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court;

(d) if an international organization other than those referred to in subparagraph (c) is a party to the dispute, it may, through a Member State of the United Nations, follow the procedure specified in subparagraph (b);

(e) the advisory opinion given pursuant to subparagraph (b), (c) or (d) shall be accepted as decisive by all the parties to the dispute concerned;

(f) if the request under subparagraph (b), (c) or (d) for an advisory opinion of the Court is not granted, any one of the parties to the dispute may, by written notification to the other party or parties, submit it to arbitration in accordance with the provisions of the Annex to the present Convention.

3. The provisions of paragraph 2 apply unless all the parties to a dispute referred to in that paragraph by common consent agree to submit the dispute to an arbitration procedure, including the one specified in the Annex to the present Convention.

4. With respect to a dispute concerning the application or the interpretation of any of the articles in Part V, other than articles 53 and 64, of the present Convention, any one of the parties to the dispute may set in motion the conciliation procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

*Article 67. Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty*

1. The notification provided for under article 65, paragraph 1, must be made in writing.

2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument emanating from a State is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers. If the instrument emanates from an international organization, the representative of the organization communicating it may be called upon to produce full powers.

*Article 68. Revocation of notifications and instruments provided for in articles 65 and 67*

A notification or instrument provided for in articles 65 or 67 may be revoked at any time before it takes effect.

Section 5. Consequences of the invalidity, termination or suspension of the operation of a treaty

*Article 69. Consequences of the invalidity of a treaty*

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(b) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.

4. In the case of the invalidity of the consent of a particular State or a particular international organization to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State or that organization and the parties to the treaty.

*Article 70. Consequences of the termination of a treaty*

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State or an international organization denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State or that organization and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

*Article 71. Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law*

1. In the case of a treaty which is void under article 53 the parties shall:

(a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and

(b) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

*Article 72. Consequences of the suspension  
of the operation of a treaty*

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:
  - (a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;
  - (b) does not otherwise affect the legal relations between the parties established by the treaty.
2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

**PART VI. MISCELLANEOUS PROVISIONS**

*Article 73. Relationship to the Vienna Convention  
on the Law of Treaties*

As between States Parties to the Vienna Convention on the Law of Treaties of 1969, the relations of those States under a treaty between two or more States and one or more international organizations shall be governed by that Convention.

*Article 74. Questions not prejudged by the present Convention*

1. The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty between one or more States and one or more international organizations from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.
2. The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from the international responsibility of an international organization, from the termination of the existence of the organization or from the termination of participation by a State in the membership of the organization.
3. The provisions of the present Convention shall not prejudge any question that may arise in regard to the establishment of obligations and rights for States members of an international organization under a treaty to which that organization is a party.

*Article 75. Diplomatic and consular relations and  
the conclusion of treaties*

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between two or more of those States and one or more international organizations. The conclusion of such a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

*Article 76. Case of an aggressor State*

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty between one or more States and one or more international organizations which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

PART VII. DEPOSITARIES, NOTIFICATIONS, CORRECTIONS  
AND REGISTRATION

*Article 77. Depositaries of treaties*

1. The designation of the depositary of a treaty may be made by the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State or an international organization and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

*Article 78. Functions of depositaries*

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States and contracting organizations or, as the case may be, by the contracting organizations, comprise in particular:

(a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

- (b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States and international organizations entitled to become parties to the treaty;
- (c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;
- (d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State or international organization in question;
- (e) informing the parties and the States and international organizations entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;
- (f) informing the States and international organizations entitled to become parties to the treaty when the number of signatures or of instruments of ratification, instruments relating to an act of formal confirmation, or of instruments of acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;
- (g) registering the treaty with the Secretariat of the United Nations;
- (h) performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State or an international organization and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of:

- (a) the signatory States and organizations and the contracting States and contracting organizations; or
- (b) where appropriate, the competent organ of the international organization concerned.

#### *Article 79. Notifications and communications*

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State or any international organization under the present Convention shall:

- (a) if there is no depositary, be transmitted direct to the States and organizations for which it is intended, or if there is a depositary, to the latter;

(b) be considered as having been made by the State or organization in question only upon its receipt by the State or organization to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(c) if transmitted to a depositary, be considered as received by the State or organization for which it was intended only when the latter State or organization has been informed by the depositary in accordance with article 78, paragraph 1(e).

*Article 80. Correction of errors in texts or  
in certified copies of treaties*

1. Where, after the authentication of the text of a treaty, the signatory States and international organizations and the contracting States and contracting organizations are agreed that it contains an error, the error shall, unless those States and organizations decide upon some other means of correction, be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and international organizations and the contracting States and contracting organizations of the error and of the proposal to correct it and shall specify an appropriate time limit within which objection to the proposed correction may be raised. If, on the expiry of the time limit:

(a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a *procés-verbal* of the rectification of the text and communicate a copy of it to the parties and to the States and organizations entitled to become parties to the treaty;

(b) an objection has been raised, the depositary shall communicate the objection to the signatory States and organizations and to the contracting States and contracting organizations.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and international organizations and the contracting States and contracting organizations agree should be corrected.

4. The corrected text replaces the defective text *ab initio*, unless the signatory States and international organizations and the contracting States and contracting organizations otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procés-verbal* specifying the rectification and communicate a copy of it to the signatory States and international organizations and to the contracting States and contracting organizations.

#### *Article 81. Registration and publication of treaties*

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

### PART VIII. FINAL PROVISIONS

#### *Article 82. Signature*

The present Convention shall be open for signature until 31 December 1986 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 June 1987, at United Nations Headquarters, New York by:

(a) all States;

(b) Namibia, represented by the United Nations Council for Namibia;

(c) international organizations invited to participate in the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations.

#### *Article 83. Ratification or act of formal confirmation*

The present Convention is subject to ratification by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by international organizations. The instruments of ratification and those relating to acts of formal confirmation shall be deposited with the Secretary-General of the United Nations.

*Article 84. Accession*

1. The present Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by any international organization which has the capacity to conclude treaties.
2. An instrument of accession of an international organization shall contain a declaration that it has the capacity to conclude treaties.
3. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 85. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession by States or by Namibia, represented by the United Nations Council for Namibia.
2. For each State or for Namibia, represented by the United Nations Council for Namibia, ratifying or acceding to the Convention after the condition specified in paragraph 1 has been fulfilled, the Convention shall enter into force on the thirtieth day after deposit by such State or by Namibia of its instrument of ratification or accession.
3. For each international organization depositing an instrument relating to an act of formal confirmation or an instrument of accession, the Convention shall enter into force on the thirtieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1, whichever is later.

*Article 86. Authentic texts*

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized by their respective Governments, and duly authorized representatives of the United Nations Council for Namibia and of international organizations have signed the present Convention.

DONE at Vienna, this twenty-first day of March one thousand nine hundred and eighty-six.

**ANNEX. ARBITRATION AND CONCILIATION PROCEDURES ESTABLISHED  
IN APPLICATION OF ARTICLE 66**

**I. ESTABLISHMENT OF THE ARBITRAL TRIBUNAL OR CONCILIATION  
COMMISSION**

1. A list consisting of qualified jurists, from which the parties to a dispute may choose the persons who are to constitute an arbitral tribunal or, as the case may be, a conciliation commission, shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations and every Party to the present Convention shall be invited to nominate two persons, and the names of the persons so nominated shall constitute the list, a copy of which shall be transmitted to the President of the International Court of Justice. The term of office of a person on the list, including that of any person nominated to fill a casual vacancy, shall be five years and may be renewed. A person whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraphs.

2. When notification has been made under article 66, paragraph 2, subparagraph (f), or agreement on the procedure in the present Annex has been reached under paragraph 3, the dispute shall be brought before an arbitral tribunal. When a request has been made to the Secretary-General under article 66, paragraph 4, the Secretary-General shall bring the dispute before a conciliation commission. Both the arbitral tribunal and the conciliation commission shall be constituted as follows:

The States, international organizations or, as the case may be, the States and organizations which constitute one of the parties to the dispute shall appoint by common consent:

(a) one arbitrator or, as the case may be, one conciliator, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one arbitrator or, as the case may be, one conciliator, who shall be chosen from among those included in the list and shall not be of the nationality of any of the States or nominated by any of the organizations which constitute that party to the dispute, provided that a dispute between two international organizations is not considered by nationals of one and the same State.

The States, international organizations or, as the case may be, the States and organizations which constitute the other party to the dispute shall appoint two arbitrators or, as the case may be, two conciliators, in the same way. The four persons chosen by the parties shall be appointed within sixty days following the date on which the other party to the dispute receives notification under article 66, paragraph 2, subpara-

graph (f), or on which the agreement on the procedure in the present Annex under paragraph 3 is reached, or on which the Secretary-General receives the request for conciliation.

The four persons so chosen shall, within sixty days following the date of the last of their own appointments, appoint from the list a fifth arbitrator or, as the case may be, conciliator, who shall be chairman.

If the appointment of the chairman, or any of the arbitrators or, as the case may be, conciliators, has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General of the United Nations within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute. If the United Nations is a party or is included in one of the parties to the dispute, the Secretary-General shall transmit the above-mentioned request to the President of the International Court of Justice, who shall perform the functions conferred upon the Secretary-General under this subparagraph.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

The appointment of arbitrators or conciliators by an international organization provided for in paragraphs 1 and 2 shall be governed by the rules of that organization.

## II. FUNCTIONING OF THE ARBITRAL TRIBUNAL

3. Unless the parties to the dispute otherwise agree, the Arbitral Tribunal shall decide its own procedure, assuring to each party to the dispute a full opportunity to be heard and to present its case.

4. The Arbitral Tribunal, with the consent of the parties to the dispute, may invite any interested State or international organization to submit to it its views orally or in writing.

5. Decisions of the Arbitral Tribunal shall be adopted by a majority vote of the members. In the event of an equality of votes, the vote of the Chairman shall be decisive.

6. When one of the parties to the dispute does not appear before the Tribunal or fails to defend its case, the other party may request the Tribunal to continue the proceedings and to make its award. Before making its award, the Tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

7. The award of the Arbitral Tribunal shall be confined to the subject matter of the dispute and state the reasons on which it is based. Any member of the Tribunal may attach a separate or dissenting opinion to the award.

8. The award shall be final and without appeal. It shall be complied with by all parties to the dispute.

9. The Secretary-General shall provide the Tribunal with such assistance and facilities as it may require. The expenses of the Tribunal shall be borne by the United Nations.

### III. FUNCTIONING OF THE CONCILIATION COMMISSION

10. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

11. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

12. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

13. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

14. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

### 12. CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF  
INTERNATIONAL WATERCOURSES. ADOPTED BY THE  
GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 MAY 1997\*

The Parties to the present Convention,

---

\* Not yet in force. See General Assembly resolution 51/229, annex.

*Conscious of the importance of international watercourses and the non-navigational uses thereof in many regions of the world,*

*Having in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,*

*Considering that successful codification and progressive development of rules of international law regarding non-navigational uses of international watercourses would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,*

*Taking into account the problems affecting many international watercourses resulting from, among other things, increasing demands and pollution,*

*Expressing the conviction that a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations,*

*Affirming the importance of international cooperation and good-neighbourliness in this field,*

*Aware of the special situation and needs of developing countries,*

*Recalling the principles and recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration and Agenda 21,*

*Recalling also the existing bilateral and multilateral agreements regarding the non-navigational uses of international watercourses,*

*Mindful of the valuable contribution of international organizations, both governmental and non-governmental, to the codification and progressive development of international law in this field,*

*Appreciative of the work carried out by the International Law Commission on the law of the non-navigational uses of international watercourses,*

*Bearing in mind United Nations General Assembly resolution 49/52 of 9 December 1994,*

*Have agreed as follows:*

## PART I. INTRODUCTION

### Article 1. Scope of the present Convention

1. The present Convention applies to uses of international watercourses and of their waters for purposes other than navigation and to

measures of protection, preservation and management related to the uses of those watercourses and their waters.

2. The uses of international watercourses for navigation is not within the scope of the present Convention except insofar as other uses affect navigation or are affected by navigation.

#### *Article 2. Use of terms*

For the purposes of the present Convention:

(a) "watercourse" means a system of surface waters and ground-waters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;

(b) "international watercourse" means a watercourse, parts of which are situated in different States;

(c) "watercourse State" means a State Party to the present Convention in whose territory part of an international watercourse is situated, or a Party that is a regional economic integration organization, in the territory of one or more of whose Member States part of an international watercourse is situated;

(d) "regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

#### *Article 3. Watercourse agreements*

1. In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.

2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.

3. Watercourse States may enter into one or more agreements, hereinafter referred to as "watercourse agreements," which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.

4. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a

significant extent, the use by one or more other watercourse States of the waters of the watercourse, without their express consent.

5. Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.

6. Where some but not all watercourse States to a particular international watercourse are parties to an agreement, nothing in such agreement shall affect the rights or obligations under the present Convention of watercourse States that are not parties to such an agreement.

#### *Article 4. Parties to watercourse agreements*

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.

2. A watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

### PART II. GENERAL PRINCIPLES

#### *Article 5. Equitable and reasonable utilization and participation*

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.

*Article 6. Factors relevant to equitable and reasonable utilization*

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

- (a) geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
- (b) the social and economic needs of the watercourse States concerned;
- (c) the population dependent on the watercourse in each watercourse State;
- (d) the effects of the use or uses of the watercourses in one watercourse State on other watercourse States;
- (e) existing and potential uses of the watercourse;
- (f) conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
- (g) the availability of alternatives, of comparable value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

*Article 7. Obligation not to cause significant harm*

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.

2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

*Article 8. General obligation to cooperate*

1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.
2. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.

*Article 9. Regular exchange of data and information*

1. Pursuant to article 8, watercourse States shall on a regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality as well as related forecasts.
2. If a watercourse State is requested by another watercourse State to provide data or information that is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.
3. Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated.

*Article 10. Relationship between different kinds of uses*

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.
2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs.

### PART III. PLANNED MEASURES

#### *Article 11. Information concerning planned measures*

Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.

#### *Article 12. Notification concerning planned measures with possible adverse effects*

Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

#### *Article 13. Period for reply to notification*

Unless otherwise agreed:

(a) a watercourse State providing a notification under article 12 shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;

(b) this period shall, at the request of a notified State for which the evaluation of the planned measures poses special difficulty, be extended for a period of six months.

#### *Article 14. Obligations of the notifying State during the period for reply*

During the period referred to in article 13, the notifying State:

(a) shall cooperate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and

(b) shall not implement or permit the implementation of the planned measures without the consent of the notified States.

#### *Article 15. Reply to notification*

The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to article 13. If a notified State finds that implementation of the planned

measures would be inconsistent with the provisions of articles 5 or 7, it shall attach to its finding a documented explanation setting forth the reasons for the finding.

*Article 16. Absence of reply to notification*

1. If, within the period applicable pursuant to article 13, the notifying State receives no communication under article 15, it may, subject to its obligations under articles 5 and 7, proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.

2. Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to article 13 may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified State had objected within that period.

*Article 17. Consultations and negotiations concerning planned measures*

1. If a communication is made under article 15 that implementation of the planned measures would be inconsistent with the provisions of article 5 or 7, the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.

2. The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.

3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

*Article 18. Procedures in the absence of notification*

1. If a watercourse State has reasonable grounds to believe that another watercourse State is planning measures that may have a significant adverse effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so inform the other State, providing a documented

explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17.

3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or permitting the implementation of those measures for a period of six months unless otherwise agreed.

#### *Article 19. Urgent implementation of planned measures*

1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17.

2. In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other watercourse States referred to in article 12 together with the relevant data and information.

3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.

### PART IV. PROTECTION, PRESERVATION AND MANAGEMENT

#### *Article 20. Protection and preservation of ecosystems*

Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.

#### *Article 21. Prevention, reduction and control of pollution*

1. For the purpose of this article, "pollution of an international watercourse" means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.

2. Watercourse States shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources

of the watercourse. Watercourse States shall take steps to harmonize their policies in this connection.

3. Watercourse States shall, at the request of any of them, consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of an international watercourse, such as:

- (a) setting joint water quality objectives and criteria;
- (b) establishing techniques and practices to address pollution from point and non-point sources;
- (c) establishing lists of substances the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored.

#### *Article 22. Introduction of alien or new species*

Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in significant harm to other watercourse States.

#### *Article 23. Protection and preservation of the marine environment*

Watercourse States shall, individually and, where appropriate, in cooperation with other States, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards.

#### *Article 24. Management*

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.

2. For the purposes of this article, "management" refers, in particular, to:

- (a) planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and
- (b) otherwise promoting the rational and optimal utilization, protection and control of the watercourse.

*Article 25. Regulation*

1. Watercourse States shall cooperate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of an international watercourse.
2. Unless otherwise agreed, watercourse States shall participate on an equitable basis in the construction and maintenance or defrayment of the costs of such regulation works as they may have agreed to undertake.
3. For the purposes of this article, “regulation” means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse.

*Article 26. Installations*

1. Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse.
2. Watercourse States shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations with regard to:
  - (a) the safe operation and maintenance of installations, facilities or other works related to an international watercourse; and
  - (b) the protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

PART V. HARMFUL CONDITIONS AND EMERGENCY SITUATIONS

*Article 27. Prevention and mitigation of harmful conditions*

Watercourse States shall, individually and, where appropriate, jointly, take all appropriate measures to prevent or mitigate conditions related to an international watercourse that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.

*Article 28. Emergency situations*

1. For the purposes of this article, “emergency” means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct, such as industrial accidents.

2. A watercourse State shall, without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of any emergency originating within its territory.

3. A watercourse State within whose territory an emergency originates shall, in cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.

4. When necessary, watercourse States shall jointly develop contingency plans for responding to emergencies, in cooperation, where appropriate, with other potentially affected States and competent international organizations.

#### PART VI. MISCELLANEOUS PROVISIONS

##### *Article 29. International watercourses and installations in time of armed conflict*

International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

##### *Article 30. Indirect procedures*

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of cooperation provided for in the present Convention, including exchange of data and information, notification, communication, consultations and negotiations, through any indirect procedure accepted by them.

##### *Article 31. Data and information vital to national defence or security*

Nothing in the present Convention obliges a watercourse State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

*Article 32. Non-discrimination*

Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant trans-boundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

*Article 33. Settlement of disputes*

1. In the event of a dispute between two or more parties concerning the interpretation or application of the present Convention, the parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.

2. If the parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice.

3. Subject to the operation of paragraph 10, if after six months from the time of the request for negotiations referred to in paragraph 2, the parties concerned have not been able to settle their dispute through negotiation or any other means referred to in paragraph 2, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding in accordance with paragraphs 4 to 9, unless the parties otherwise agree.

4. A Fact-finding Commission shall be established, composed of one member nominated by each party concerned and in addition a member not having the nationality of any of the parties concerned chosen by the nominated members who shall serve as Chairman.

5. If the members nominated by the parties are unable to agree on a Chairman within three months of the request for the establishment of the Commission, any party concerned may request the Secretary-General of the United Nations to appoint the Chairman who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. If one of the parties fails to nominate a member within three months of the initial request pursuant to paragraph 3, any other party concerned may request the Secretary-General

eral of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. The person so appointed shall constitute a single-member Commission.

6. The Commission shall determine its own procedure.

7. The parties concerned have the obligation to provide the Commission with such information as it may require and, on request, to permit the Commission to have access to their respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.

8. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the parties concerned setting forth its findings and the reasons therefor and such recommendations as it deems appropriate for an equitable solution of the dispute, which the parties concerned shall consider in good faith.

9. The expenses of the Commission shall be borne equally by the parties concerned.

10. When ratifying, accepting, approving or acceding to the present Convention, or at any time thereafter, a party which is not a regional economic integration organization may declare in a written instrument submitted to the depositary that, in respect of any dispute not resolved in accordance with paragraph 2, it recognizes as compulsory *ipso facto*, and without special agreement in relation to any party accepting the same obligation:

(a) submission of the dispute to the International Court of Justice; and/or

(b) arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the annex to the present Convention.

A party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with subparagraph (b).

## PART VII. FINAL CLAUSES

### *Article 34. Signature*

The present Convention shall be open for signature by all States and by regional economic integration organizations from 21 May 1997 until 20 May 2000 at United Nations Headquarters in New York.

*Article 35. Ratification, acceptance, approval or accession*

1. The present Convention is subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

2. Any regional economic integration organization which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of the United Nations of any substantial modification in the extent of their competence.

*Article 36. Entry into force*

1. The present Convention shall enter into force on the ninetieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States.

*Article 37. Authentic texts*

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE at New York, this twenty-first day of May one thousand nine hundred and ninety-seven.

#### ANNEX. ARBITRATION

##### *Article 1*

Unless the parties to the dispute otherwise agree, the arbitration pursuant to article 33 of the Convention shall take place in accordance with articles 2 to 14 of the present annex.

##### *Article 2*

The claimant party shall notify the respondent party that it is referring a dispute to arbitration pursuant to article 33 of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute, the arbitral tribunal shall determine the subject matter.

##### *Article 3*

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the Chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute or of any riparian State of the watercourse concerned, nor have his or her usual place of residence in the territory of one of these parties or such riparian State, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

##### *Article 4*

1. If the Chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the President of the International Court of Justice shall, at the request of a party, designate the Chairman within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the President of the International Court of Justice, who shall make the designation within a further two-month period.

#### *Article 5*

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

#### *Article 6*

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

#### *Article 7*

The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection.

#### *Article 8*

1. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) provide it with all relevant documents, information and facilities; and

(b) enable it, when necessary, to call witnesses or experts and receive their evidence.

2. The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

#### *Article 9*

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

#### *Article 10*

Any party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

*Article 11*

The tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

*Article 12*

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

*Article 13*

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

*Article 14*

1. The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which should not exceed five more months.

2. The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

3. The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

4. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

13. UNITED NATIONS CONVENTION ON JURISDICTIONAL  
IMMUNITIES OF STATES AND THEIR PROPERTY

UNITED NATIONS CONVENTION ON JURISDICTIONAL IMMUNITIES  
OF STATES AND THEIR PROPERTY. ADOPTED BY THE GENERAL  
ASSEMBLY ON 2 DECEMBER 2004\*

*The States Parties to the present Convention,*

*Considering* that the jurisdictional immunities of States and their property are generally accepted as a principle of customary international law,

*Having in mind* the principles of international law embodied in the Charter of the United Nations,

*Believing* that an international convention on the jurisdictional immunities of States and their property would enhance the rule of law and legal certainty, particularly in dealings of States with natural or juridical persons, and would contribute to the codification and development of international law and the harmonization of practice in this area,

*Taking into account* developments in State practice with regard to the jurisdictional immunities of States and their property,

*Affirming* that the rules of customary international law continue to govern matters not regulated by the provisions of the present Convention,

*Have agreed as follows:*

## PART I. INTRODUCTION

### *Article 1. Scope of the present Convention*

The present Convention applies to the immunity of a State and its property from the jurisdiction of the courts of another State.

### *Article 2. Use of terms*

1. For the purposes of the present Convention:

(a) “court” means any organ of a State, however named, entitled to exercise judicial functions;

(b) “State” means:

- (i) the State and its various organs of government;
- (ii) constituent units of a federal State or political subdivisions of the State, which are entitled to perform acts in

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\* Not yet in force. See General Assembly resolution 59/38, annex.

- the exercise of sovereign authority, and are acting in that capacity;
- (iii) agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State;
- (iv) representatives of the State acting in that capacity;
- (c) “commercial transaction” means:
- (i) any commercial contract or transaction for the sale of goods or supply of services;
- (ii) any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;
- (iii) any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

2. In determining whether a contract or transaction is a “commercial transaction” under paragraph 1 (c), reference should be made primarily to the nature of the contract or transaction, but its purpose should also be taken into account if the parties to the contract or transaction have so agreed, or if, in the practice of the State of the forum, that purpose is relevant to determining the non-commercial character of the contract or transaction.

3. The provisions of paragraphs 1 and 2 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or in the internal law of any State.

*Article 3. Privileges and immunities not affected  
by the present Convention*

1. The present Convention is without prejudice to the privileges and immunities enjoyed by a State under international law in relation to the exercise of the functions of:

(a) its diplomatic missions, consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences; and

(b) persons connected with them.

2. The present Convention is without prejudice to privileges and immunities accorded under international law to heads of State *ratione personae*.

3. The present Convention is without prejudice to the immunities enjoyed by a State under international law with respect to aircraft or space objects owned or operated by a State.

*Article 4. Non-retroactivity of the present Convention*

Without prejudice to the application of any rules set forth in the present Convention to which jurisdictional immunities of States and their property are subject under international law independently of the present Convention, the present Convention shall not apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the entry into force of the present Convention for the States concerned.

PART II. GENERAL PRINCIPLES

*Article 5. State immunity*

A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention.

*Article 6. Modalities for giving effect to State immunity*

1. A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts determine on their own initiative that the immunity of that other State under article 5 is respected.

2. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State:

(a) is named as a party to that proceeding; or

(b) is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that other State.

*Article 7. Express consent to exercise of jurisdiction*

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State with regard to a matter or case if it has expressly consented to the exercise of jurisdiction by the court with regard to the matter or case:

(a) by international agreement;

(b) in a written contract; or

(c) by a declaration before the court or by a written communication in a specific proceeding.

2. Agreement by a State for the application of the law of another State shall not be interpreted as consent to the exercise of jurisdiction by the courts of that other State.

*Article 8. Effect of participation in a proceeding before a court*

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State if it has:

(a) itself instituted the proceeding; or

(b) intervened in the proceeding or taken any other step relating to the merits. However, if the State satisfies the court that it could not have acquired knowledge of facts on which a claim to immunity can be based until after it took such a step, it can claim immunity based on those facts, provided it does so at the earliest possible moment.

2. A State shall not be considered to have consented to the exercise of jurisdiction by a court of another State if it intervenes in a proceeding or takes any other step for the sole purpose of:

(a) invoking immunity; or

(b) asserting a right or interest in property at issue in the proceeding.

3. The appearance of a representative of a State before a court of another State as a witness shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

4. Failure on the part of a State to enter an appearance in a proceeding before a court of another State shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

*Article 9. Counterclaims*

1. A State instituting a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the principal claim.

2. A State intervening to present a claim in a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the claim presented by the State.

3. A State making a counterclaim in a proceeding instituted against it before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of the principal claim.

### PART III. PROCEEDINGS IN WHICH STATE IMMUNITY CANNOT BE INVOKED

#### *Article 10. Commercial transactions*

1. If a State engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State, the State cannot invoke immunity from that jurisdiction in a proceeding arising out of that commercial transaction.
2. Paragraph 1 does not apply:
  - (a) in the case of a commercial transaction between States; or
  - (b) if the parties to the commercial transaction have expressly agreed otherwise.
3. Where a State enterprise or other entity established by a State which has an independent legal personality and is capable of:
  - (a) suing or being sued; and
  - (b) acquiring, owning or possessing and disposing of property, including property which that State has authorized it to operate or manage, is involved in a proceeding which relates to a commercial transaction in which that entity is engaged, the immunity from jurisdiction enjoyed by that State shall not be affected.

#### *Article 11. Contracts of employment*

1. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment between the State and an individual for work performed or to be performed, in whole or in part, in the territory of that other State.
2. Paragraph 1 does not apply if:
  - (a) the employee has been recruited to perform particular functions in the exercise of governmental authority;
  - (b) the employee is:
    - (i) a diplomatic agent, as defined in the Vienna Convention on Diplomatic Relations of 1961;
    - (ii) a consular officer, as defined in the Vienna Convention on Consular Relations of 1963;
    - (iii) a member of the diplomatic staff of a permanent mission to an international organization or of a special mission,

- or is recruited to represent a State at an international conference; or
- (iv) any other person enjoying diplomatic immunity;
- (c) the subject-matter of the proceeding is the recruitment, renewal of employment or reinstatement of an individual;
- (d) the subject-matter of the proceeding is the dismissal or termination of employment of an individual and, as determined by the head of State, the head of Government or the Minister for Foreign Affairs of the employer State, such a proceeding would interfere with the security interests of that State;
- (e) the employee is a national of the employer State at the time when the proceeding is instituted, unless this person has the permanent residence in the State of the forum; or
- (f) the employer State and the employee have otherwise agreed in writing, subject to any considerations of public policy conferring on the courts of the State of the forum exclusive jurisdiction by reason of the subject-matter of the proceeding.

#### *Article 12. Personal injuries and damage to property*

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission.

#### *Article 13. Ownership, possession and use of property*

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

- (a) any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;
- (b) any right or interest of the State in movable or immovable property arising by way of succession, gift or *bona vacantia*; or

(c) any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding up.

#### *Article 14. Intellectual and industrial property*

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(a) the determination of any right of the State in a patent, industrial design, trade name or business name, trademark, copyright or any other form of intellectual or industrial property which enjoys a measure of legal protection, even if provisional, in the State of the forum; or

(b) an alleged infringement by the State, in the territory of the State of the forum, of a right of the nature mentioned in subparagraph (a) which belongs to a third person and is protected in the State of the forum.

#### *Article 15. Participation in companies or other collective bodies*

1. A State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to its participation in a company or other collective body, whether incorporated or unincorporated, being a proceeding concerning the relationship between the State and the body or the other participants therein, provided that the body:

(a) has participants other than States or international organizations; and

(b) is incorporated or constituted under the law of the State of the forum or has its seat or principal place of business in that State.

2. A State can, however, invoke immunity from jurisdiction in such a proceeding if the States concerned have so agreed or if the parties to the dispute have so provided by an agreement in writing or if the instrument establishing or regulating the body in question contains provisions to that effect.

#### *Article 16. Ships owned or operated by a State*

1. Unless otherwise agreed between the States concerned, a State which owns or operates a ship cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the operation of that ship if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.

2. Paragraph 1 does not apply to warships, or naval auxiliaries, nor does it apply to other vessels owned or operated by a State and used, for the time being, only on government non-commercial service.

3. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the carriage of cargo on board a ship owned or operated by that State if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.

4. Paragraph 3 does not apply to any cargo carried on board the ships referred to in paragraph 2, nor does it apply to any cargo owned by a State and used or intended for use exclusively for government non-commercial purposes.

5. States may plead all measures of defence, prescription and limitation of liability which are available to private ships and cargoes and their owners.

6. If in a proceeding there arises a question relating to the government and non-commercial character of a ship owned or operated by a State or cargo owned by a State, a certificate signed by a diplomatic representative or other competent authority of that State and communicated to the court shall serve as evidence of the character of that ship or cargo.

#### *Article 17. Effect of an arbitration agreement*

If a State enters into an agreement in writing with a foreign natural or juridical person to submit to arbitration differences relating to a commercial transaction, that State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

- (a) the validity, interpretation or application of the arbitration agreement;
- (b) the arbitration procedure; or
- (c) the confirmation or the setting aside of the award, unless the arbitration agreement otherwise provides.

### PART IV. STATE IMMUNITY FROM MEASURES OF CONSTRAINT IN CONNECTION WITH PROCEEDINGS BEFORE A COURT

#### *Article 18. State immunity from pre-judgment measures of constraint*

No pre-judgment measures of constraint, such as attachment or arrest, against property of a State may be taken in connection with a

proceeding before a court of another State unless and except to the extent that:

(a) the State has expressly consented to the taking of such measures as indicated:

- (i) by international agreement;
- (ii) by an arbitration agreement or in a written contract; or
- (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen;  
or

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding.

*Article 19. State immunity from  
post-judgment measures of constraint*

No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) the State has expressly consented to the taking of such measures as indicated:

- (i) by international agreement;
- (ii) by an arbitration agreement or in a written contract; or
- (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen;  
or

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or

(c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum, provided that post-judgment measures of constraint may only be taken against property that has a connection with the entity against which the proceeding was directed.

*Article 20. Effect of consent to jurisdiction  
to measures of constraint*

Where consent to the measures of constraint is required under articles 18 and 19, consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint.

*Article 21. Specific categories of property*

1. The following categories, in particular, of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under article 19, subparagraph (c):

(a) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences;

(b) property of a military character or used or intended for use in the performance of military functions;

(c) property of the central bank or other monetary authority of the State;

(d) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;

(e) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.

2. Paragraph 1 is without prejudice to article 18 and article 19, subparagraphs (a) and (b).

**PART V. MISCELLANEOUS PROVISIONS***Article 22. Service of process*

1. Service of process by writ or other document instituting a proceeding against a State shall be effected:

(a) in accordance with any applicable international convention binding on the State of the forum and the State concerned; or

(b) in accordance with any special arrangement for service between the claimant and the State concerned, if not precluded by the law of the State of the forum; or

(c) in the absence of such a convention or special arrangement:

(i) by transmission through diplomatic channels to the Ministry of Foreign Affairs of the State concerned; or

(ii) by any other means accepted by the State concerned, if not precluded by the law of the State of the forum.

2. Service of process referred to in paragraph 1 (c) (i) is deemed to have been effected by receipt of the documents by the Ministry of Foreign Affairs.

3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned.

4. Any State that enters an appearance on the merits in a proceeding instituted against it may not thereafter assert that service of process did not comply with the provisions of paragraphs 1 and 3.

*Article 23. Default judgment*

1. A default judgment shall not be rendered against a State unless the court has found that:

(a) the requirements laid down in article 22, paragraphs 1 and 3, have been complied with;

(b) a period of not less than four months has expired from the date on which the service of the writ or other document instituting a proceeding has been effected or deemed to have been effected in accordance with article 22, paragraphs 1 and 2; and

(c) the present Convention does not preclude it from exercising jurisdiction.

2. A copy of any default judgment rendered against a State, accompanied if necessary by a translation into the official language or one of the official languages of the State concerned, shall be transmitted to it through one of the means specified in article 22, paragraph 1, and in accordance with the provisions of that paragraph.

3. The time-limit for applying to have a default judgment set aside shall not be less than four months and shall begin to run from the date on which the copy of the judgment is received or is deemed to have been received by the State concerned.

*Article 24. Privileges and immunities during court proceedings*

1. Any failure or refusal by a State to comply with an order of a court of another State enjoining it to perform or refrain from performing a specific act or to produce any document or disclose any other information for the purposes of a proceeding shall entail no consequences other than those which may result from such conduct in relation to the merits of the case. In particular, no fine or penalty shall be imposed on the State by reason of such failure or refusal.

2. A State shall not be required to provide any security, bond or deposit, however described, to guarantee the payment of judicial costs or expenses in any proceeding to which it is a respondent party before a court of another State.

## PART VI. FINAL CLAUSES

### *Article 25. Annex*

The annex to the present Convention forms an integral part of the Convention.

### *Article 26. Other international agreements*

Nothing in the present Convention shall affect the rights and obligations of States Parties under existing international agreements which relate to matters dealt with in the present Convention as between the parties to those agreements.

### *Article 27. Settlement of disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of the present Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within six months shall, at the request of any of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of, or accession to, the present Convention, declare that it does not consider itself bound by paragraph 2. The other States Parties shall not be bound by paragraph 2 with respect to any State Party which has made such a declaration.

4. Any State Party that has made a declaration in accordance with paragraph 3 may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

### *Article 28. Signature*

The present Convention shall be open for signature by all States until 17 January 2007, at United Nations Headquarters, New York.

### *Article 29. Ratification, acceptance, approval or accession*

1. The present Convention shall be subject to ratification, acceptance or approval.

2. The present Convention shall remain open for accession by any State.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

*Article 30. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the present Convention after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

*Article 31. Denunciation*

1. Any State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. The present Convention shall, however, continue to apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the date on which the denunciation takes effect for any of the States concerned.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in the present Convention to which it would be subject under international law independently of the present Convention.

*Article 32. Depositary and notifications*

1. The Secretary-General of the United Nations is designated the depositary of the present Convention.

2. As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States of the following:

(a) signatures of the present Convention and the deposit of instruments of ratification, acceptance, approval or accession or notifications of denunciation, in accordance with articles 29 and 31;

(b) the date on which the present Convention will enter into force, in accordance with article 30;

(c) any acts, notifications or communications relating to the present Convention.

*Article 33. Authentic texts*

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention opened for signature at United Nations Headquarters in New York on 17 January 2005.

ANNEX TO THE CONVENTION

UNDERSTANDINGS WITH RESPECT TO CERTAIN PROVISIONS  
OF THE CONVENTION

The present annex is for the purpose of setting out understandings relating to the provisions concerned.

*With respect to article 10*

The term “immunity” in article 10 is to be understood in the context of the present Convention as a whole.

Article 10, paragraph 3, does not prejudge the question of “piercing the corporate veil”, questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

*With respect to article 11*

The reference in article 11, paragraph 2 (d), to the “security interests” of the employer State is intended primarily to address matters of national security and the security of diplomatic missions and consular posts.

Under article 41 of the 1961 Vienna Convention on Diplomatic Relations and article 55 of the 1963 Vienna Convention on Consular Relations, all persons referred to in those articles have the duty to respect the laws and regulations, including labour laws, of the host country. At the same time, under article 38 of the 1961 Vienna Convention on Diplomatic Relations and article 71 of the 1963 Vienna Convention on Consular Relations, the receiving State has a duty to exercise its jurisdiction

in such a manner as not to interfere unduly with the performance of the functions of the mission or the consular post.

*With respect to articles 13 and 14*

The expression “determination” is used to refer not only to the ascertainment or verification of the existence of the rights protected, but also to the evaluation or assessment of the substance, including content, scope and extent, of such rights.

*With respect to article 17*

The expression “commercial transaction” includes investment matters.

*With respect to article 19*

The expression “entity” in subparagraph (c) means the State as an independent legal personality, a constituent unit of a federal State, a subdivision of a State, an agency or instrumentality of a State or other entity, which enjoys independent legal personality.

The words “property that has a connection with the entity” in subparagraph (c) are to be understood as broader than ownership or possession.

Article 19 does not prejudge the question of “piercing the corporate veil”, questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

## ANNEX VI

### TEXTS FINALIZED BY THE INTERNATIONAL LAW COMMISSION

#### 1. DRAFT DECLARATION ON RIGHTS AND DUTIES OF STATES\*

*Whereas* the States of the world form a community governed by international law,

*Whereas* the progressive development of international law requires effective organization of the community of States,

*Whereas* a great majority of the States of the world have accordingly established a new international order under the Charter of the United Nations, and most of the other States of the world have declared their desire to live within this order,

*Whereas* a primary purpose of the United Nations is to maintain international peace and security, and the reign of law and justice is essential to the realization of this purpose, and

*Whereas* it is therefore desirable to formulate certain basic rights and duties of States in the light of new developments of international law and in harmony with the Charter of the United Nations,

*The General Assembly* of the United Nations adopts and proclaims this Declaration on Rights and Duties of States:

#### *Article 1*

Every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government.

#### *Article 2*

Every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law.

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\* Text adopted by the Commission at its first session, in 1949, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries and observations on the draft declaration, appears in *Yearbook of the International Law Commission, 1949*. Text reproduced as it appears in the annex to General Assembly resolution 375 (IV) of 6 December 1949.

*Article 3*

Every State has the duty to refrain from intervention in the internal or external affairs of any other State.

*Article 4*

Every State has the duty to refrain from fomenting civil strife in the territory of another State, and to prevent the organization within its territory of activities calculated to foment such civil strife.

*Article 5*

Every State has the right to equality in law with every other State.

*Article 6*

Every State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms, without distinction as to race, sex, language, or religion.

*Article 7*

Every State has the duty to ensure that conditions prevailing in its territory do not menace international peace and order.

*Article 8*

Every State has the duty to settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice, are not endangered.

*Article 9*

Every State has the duty to refrain from resorting to war as an instrument of national policy, and to refrain from the threat or use of force against the territorial integrity or political independence of another State, or in any other manner inconsistent with international law and order.

*Article 10*

Every State has the duty to refrain from giving assistance to any State which is acting in violation of article 9, or against which the United Nations is taking preventive or enforcement action.

*Article 11*

Every State has the duty to refrain from recognizing any territorial acquisition by another State acting in violation of article 9.

*Article 12*

Every State has the right of individual or collective self-defence against armed attack.

*Article 13*

Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.

*Article 14*

Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law.

2. PRINCIPLES OF INTERNATIONAL LAW RECOGNIZED IN THE  
CHARTER OF THE NÜRNBERG TRIBUNAL AND IN THE  
JUDGMENT OF THE TRIBUNAL\*

*Principle I*

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

*Principle II*

The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

*Principle III*

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Gov-

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\* Text adopted by the Commission at its second session, in 1950, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the principles, appears in *Yearbook of the International Law Commission, 1950*, vol. II.

ernment official does not relieve him from responsibility under international law.

*Principle IV*

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

*Principle V*

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

*Principle VI*

The crimes hereinafter set out are punishable as crimes under international law:

(a) Crimes against peace:

- (i) planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- (ii) participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

*Principle VII*

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

### 3. DRAFT CODE OF CRIMES (1954 AND 1996)

#### (a) DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND (1954)\*

##### *Article 1*

Offences against the peace and security of mankind, as defined in this Code, are crimes under international law, for which the responsible individuals shall be punished.

##### *Article 2*

The following acts are offences against the peace and security of mankind:

(1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

(2) Any threat by the authorities of a State to resort to an act of aggression against another State.

(3) The preparation by the authorities of a State of the employment of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

(4) The organization, or the encouragement of the organization, by the authorities of a State, of armed bands within its territory or any other territory for incursions into the territory of another State, or the toleration of the organization of such bands in its own territory, or the toleration of the use by such armed bands of its territory as a base of operations or as a point of departure for incursions into the territory of another State, as well as direct participation in or support of such incursions.

(5) The undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in another State, or the toleration by the authorities of a State of organized activities calculated to foment civil strife in another State.

(6) The undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State.

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\* Text adopted by the Commission at its sixth session, in 1954, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1954*, vol. II.

(7) Acts by the authorities of a State in violation of its obligations under a treaty which is designed to ensure international peace and security by means of restrictions or limitations on armaments, or on military training, or on fortifications, or of other restrictions of the same character.

(8) The annexation by the authorities of a State of territory belonging to another State, by means of acts contrary to international law.

(9) The intervention by the authorities of a State in the internal or external affairs of another State, by means of coercive measures of an economic or political character in order to force its will and thereby obtain advantages of any kind.

(10) Acts by the authorities of a State or by private individuals committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such, including:

- (i) killing members of the group;
- (ii) causing serious bodily or mental harm to members of the group;
- (iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (iv) imposing measures intended to prevent births within the group;
- (v) forcibly transferring children of the group to another group.

(11) Inhuman acts such as murder, extermination, enslavement, deportation or persecutions, committed against any civilian population on social, political, racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities.

(12) Acts in violation of the laws or customs of war.

(13) Acts which constitute:

- (i) conspiracy to commit any of the offences defined in the preceding paragraphs of this article; or
- (ii) direct incitement to commit any of the offences defined in the preceding paragraphs of this article; or
- (iii) complicity in the commission of any of the offences defined in the preceding paragraphs of this article; or
- (iv) attempts to commit any of the offences defined in the preceding paragraphs of this article.

*Article 3*

The fact that a person acted as Head of State or as responsible government official does not relieve him of responsibility for committing any of the offences defined in this Code.

*Article 4*

The fact that a person charged with an offence defined in this Code acted pursuant to an order of his Government or of a superior does not relieve him of responsibility in international law if, in the circumstances at the time, it was possible for him not to comply with that order.

- (b) DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND (1996)\*

Part One. General provisions

*Article 1. Scope and application of the present Code*

1. The present Code applies to the crimes against the peace and security of mankind set out in part two.
2. Crimes against the peace and security of mankind are crimes under international law and punishable as such, whether or not they are punishable under national law.

*Article 2. Individual responsibility*

1. A crime against the peace and security of mankind entails individual responsibility.
2. An individual shall be responsible for the crime of aggression in accordance with article 16.
3. An individual shall be responsible for a crime set out in article 17, 18, 19 or 20 if that individual:
  - (a) intentionally commits such a crime;
  - (b) orders the commission of such a crime which in fact occurs or is attempted;
  - (c) fails to prevent or repress the commission of such a crime in the circumstances set out in article 6;
  - (d) knowingly aids, abets or otherwise assists, directly and substantially, in the commission of such a crime, including providing the means for its commission;

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\* Text adopted by the Commission at its forty-eighth session, in 1996, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1996*, vol. II (Part Two).

(e) directly participates in planning or conspiring to commit such a crime which in fact occurs;

(f) directly and publicly incites another individual to commit such a crime which in fact occurs;

(g) attempts to commit such a crime by taking action commencing the execution of a crime which does not in fact occur because of circumstances independent of his intentions.

#### *Article 3. Punishment*

An individual who is responsible for a crime against the peace and security of mankind shall be liable to punishment. The punishment shall be commensurate with the character and gravity of the crime.

#### *Article 4. Responsibility of States*

The fact that the present Code provides for the responsibility of individuals for crimes against the peace and security of mankind is without prejudice to any question of the responsibility of States under international law.

#### *Article 5. Order of a Government or a superior*

The fact that an individual charged with a crime against the peace and security of mankind acted pursuant to an order of a Government or a superior does not relieve him of criminal responsibility, but may be considered in mitigation of punishment if justice so requires.

#### *Article 6. Responsibility of the superior*

The fact that a crime against the peace and security of mankind was committed by a subordinate does not relieve his superiors of criminal responsibility, if they knew or had reason to know, in the circumstances at the time, that the subordinate was committing or was going to commit such a crime and if they did not take all necessary measures within their power to prevent or repress the crime.

#### *Article 7. Official position and responsibility*

The official position of an individual who commits a crime against the peace and security of mankind, even if he acted as head of State or Government, does not relieve him of criminal responsibility or mitigate punishment.

*Article 8. Establishment of jurisdiction*

Without prejudice to the jurisdiction of an international criminal court, each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in articles 17, 18, 19 and 20, irrespective of where or by whom those crimes were committed. Jurisdiction over the crime set out in article 16 shall rest with an international criminal court. However, a State referred to in article 16 is not precluded from trying its nationals for the crime set out in that article.

*Article 9. Obligation to extradite or prosecute*

Without prejudice to the jurisdiction of an international criminal court, the State Party in the territory of which an individual alleged to have committed a crime set out in article 17, 18, 19 or 20 is found shall extradite or prosecute that individual.

*Article 10. Extradition of alleged offenders*

1. To the extent that the crimes set out in articles 17, 18, 19 and 20 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider the present Code as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.

4. Each of those crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territory of any other State Party.

*Article 11. Judicial guarantees*

1. An individual charged with a crime against the peace and security of mankind shall be presumed innocent until proved guilty and shall be entitled without discrimination to the minimum guarantees

due to all human beings with regard to the law and the facts and shall have the rights:

(a) in the determination of any charge against him, to have a fair and public hearing by a competent, independent and impartial tribunal duly established by law;

(b) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(c) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) to be tried without undue delay;

(e) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him and without payment by him if he does not have sufficient means to pay for it;

(f) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(g) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(h) not to be compelled to testify against himself or to confess guilt.

2. An individual convicted of a crime shall have the right to his conviction and sentence being reviewed according to law.

#### *Article 12. Non bis in idem*

1. No one shall be tried for a crime against the peace and security of mankind of which he has already been finally convicted or acquitted by an international criminal court.

2. An individual may not be tried again for a crime of which he has been finally convicted or acquitted by a national court except in the following cases:

(a) By an international criminal court, if:

(i) the act which was the subject of the judgement in the national court was characterized by that court as an ordinary crime and not as a crime against the peace and security of mankind; or

(ii) the national court proceedings were not impartial or independent or were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted;

- (b) By a national court of another State, if:
- (i) the act which was the subject of the previous judgement took place in the territory of that State; or
  - (ii) that State was the main victim of the crime.

3. In the case of a subsequent conviction under the present Code, the court, in passing sentence, shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

#### *Article 13. Non-retroactivity*

1. No one shall be convicted under the present Code for acts committed before its entry into force.

2. Nothing in this article precludes the trial of anyone for any act which, at the time when it was committed, was criminal in accordance with international law or national law.

#### *Article 14. Defences*

The competent court shall determine the admissibility of defences in accordance with the general principles of law, in the light of the character of each crime.

#### *Article 15. Extenuating circumstances*

In passing sentence, the court shall, where appropriate, take into account extenuating circumstances in accordance with the general principles of law.

### Part Two. Crimes against the peace and security of mankind

#### *Article 16. Crime of aggression*

An individual who, as leader or organizer, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a State shall be responsible for a crime of aggression.

#### *Article 17. Crime of genocide*

A crime of genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;

- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

*Article 18. Crimes against humanity*

A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group:

- (a) murder;
- (b) extermination;
- (c) torture;
- (d) enslavement;
- (e) persecution on political, racial, religious or ethnic grounds;
- (f) institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population;
- (g) arbitrary deportation or forcible transfer of population;
- (h) arbitrary imprisonment;
- (i) forced disappearance of persons;
- (j) rape, enforced prostitution and other forms of sexual abuse;
- (k) other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm.

*Article 19. Crimes against United Nations  
and associated personnel*

1. The following crimes constitute crimes against the peace and security of mankind when committed intentionally and in a systematic manner or on a large scale against United Nations and associated personnel involved in a United Nations operation with a view to preventing or impeding that operation from fulfilling its mandate:

- (a) murder, kidnapping or other attack upon the person or liberty of any such personnel;
- (b) violent attack upon the official premises, the private accommodation or the means of transportation of any such personnel likely to endanger his or her person or liberty.

2. This article shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.

*Article 20. War crimes*

Any of the following war crimes constitutes a crime against the peace and security of mankind when committed in a systematic manner or on a large scale:

(a) Any of the following acts committed in violation of international humanitarian law:

- (i) wilful killing;
- (ii) torture or inhuman treatment, including biological experiments;
- (iii) wilfully causing great suffering or serious injury to body or health;
- (iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) unlawful deportation or transfer of unlawful confinement of protected persons;
- (viii) taking of hostages;

(b) Any of the following acts committed wilfully in violation of international humanitarian law and causing death or serious injury to body or health:

- (i) making the civilian population or individual civilians the object of attack;
- (ii) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- (iii) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;

- (iv) making a person the object of attack in the knowledge that he is hors de combat;
  - (v) the perfidious use of the distinctive emblem of the red cross, red crescent or red lion and sun or of other recognized protective signs;
- (c) Any of the following acts committed wilfully in violation of international humanitarian law:
- (i) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies;
  - (ii) unjustifiable delay in the repatriation of prisoners of war or civilians;
- (d) Outrages upon personal dignity in violation of international humanitarian law, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (e) Any of the following acts committed in violation of the laws or customs of war:
- (i) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
  - (ii) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
  - (iii) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings or buildings or of demilitarized zones;
  - (iv) seizure of, destruction of or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
  - (v) plunder of public or private property;
- (f) Any of the following acts committed in violation of international humanitarian law applicable in armed conflict not of an international character:
- (i) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
  - (ii) collective punishments;
  - (iii) taking of hostages;
  - (iv) acts of terrorism;

- (v) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
  - (vi) pillage;
  - (vii) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are generally recognized as indispensable;
- (g) In the case of armed conflict, using methods or means of warfare not justified by military necessity with the intent to cause widespread, long-term and severe damage to the natural environment and thereby gravely prejudice the health or survival of the population and such damage occurs.

#### 4. DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS\*

##### *Preamble*

*Whereas* the Universal Declaration of Human Rights proclaims that "everyone has the right to a nationality,"

*Whereas* the Economic and Social Council has recognized that the problem of stateless persons demands "the taking of joint and separate action by Member nations in cooperation with the United Nations to ensure that everyone shall have an effective right to a nationality,"

*Whereas* statelessness often results in suffering and hardship shocking to conscience and offensive to the dignity of man,

*Whereas* statelessness is frequently productive of friction between States,

*Whereas* statelessness is inconsistent with the existing principle which postulates nationality as a condition of the enjoyment by the individual of certain rights recognized by international law,

*Whereas* the practice of many States has increasingly tended to the progressive elimination of statelessness,

*Whereas* it is imperative, by international agreement, to eliminate the evils of statelessness,

The Contracting Parties

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\* Text adopted by the Commission at its sixth session, in 1954, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1954*, vol. II.

*Hereby agree as follows:*

*Article 1*

A person who would otherwise be stateless shall acquire at birth the nationality of the Party in whose territory he is born.

*Article 2*

For the purpose of article 1, a foundling, so long as his place of birth is unknown, shall be presumed to have been born in the territory of the Party in which he is found.

*Article 3*

For the purpose of article 1, birth on a vessel shall be deemed to have taken place within the territory of the State whose flag the vessel flies. Birth on an aircraft shall be considered to have taken place within the territory of the State where the aircraft is registered.

*Article 4*

If a child is not born in the territory of a State which is a Party to this Convention he shall, if otherwise stateless, acquire the nationality of the Party of which one of his parents is a national. The nationality of the father shall prevail over that of the mother.

*Article 5*

If the law of a Party entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon acquisition of another nationality.

*Article 6*

The change or loss of the nationality of a spouse or of a parent shall not entail the loss of nationality by the other spouse or by the children unless they have or acquire another nationality.

*Article 7*

1. Renunciation shall not result in loss of nationality unless the person renouncing it has or acquires another nationality.

2. A person who seeks naturalization in a foreign country or who obtains an expatriation permit for that purpose shall not lose his nationality unless he acquires the nationality of that foreign country.

3. A person shall not lose his nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register or on any other similar ground.

#### *Article 8*

A Party may not deprive its nationals of their nationality by way of penalty or on any other ground if such deprivation renders them stateless.

#### *Article 9*

A Party may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

#### *Article 10*

1. Every treaty providing for the transfer of a territory shall include provisions for ensuring that, subject to the exercise of the right of option, the inhabitants of that territory shall not become stateless.

2. In the absence of such provisions, a State to which territory is transferred, or which otherwise acquires territory, or a new State formed on territory previously belonging to another State or States, shall confer its nationality upon the inhabitants of such territory unless they retain their former nationality by option or otherwise or have or acquire another nationality.

#### *Article 11*

1. The Parties undertake to establish, within the framework of the United Nations, an agency to act, when it deems appropriate, on behalf of stateless persons before Governments or before the tribunal referred to in paragraph 2.

2. The Parties undertake to establish, within the framework of the United Nations, a tribunal which shall be competent to decide any dispute between them concerning the interpretation or application of this Convention and to decide complaints presented by the agency referred to in paragraph 1 on behalf of a person claiming to have been denied nationality in violation of the provisions of the Convention.

3. If, within two years after the entry into force of the Convention, the agency or the tribunal referred to in paragraphs 1 and 2 has not

been established by the Parties, any of the Parties shall have the right to request the General Assembly to establish such agency or tribunal.

4. The Parties agree that any dispute between them concerning the interpretation or application of the Convention shall, if not referred to the tribunal provided for in paragraph 2, be submitted to the International Court of Justice.

#### *Article 12*

1. The present Convention, having been approved by the General Assembly, shall until . . . (a year after the approval of the General Assembly) be open for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign is addressed by the General Assembly.

2. The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. After . . . (the above date) the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### *Article 13*

1. At the time of signature, ratification or accession any State may make a reservation permitting it to postpone, for a period not exceeding two years, the application of the Convention pending the enactment of necessary legislation.

2. No other reservations to the present Convention shall be admissible.

#### *Article 14*

1. The present Convention shall enter into force on the ninetieth day following the date of the deposit of the . . . (e.g., third or sixth) instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention subsequently to the latter date, the Convention shall enter into force on the ninetieth day following the deposit of the instrument of ratification or accession by that State.

*Article 15*

Any Party to the present Convention may denounce it at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the said Party one year after the date of its receipt by the Secretary-General.

*Article 16*

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 12 of the following particulars:

- (a) signatures, ratifications and accessions under article 12;
- (b) reservations under article 13;
- (c) the date upon which the present Convention enters into force in pursuance of article 14;
- (d) denunciations under article 15.

*Article 17*

1. The present Convention shall be deposited with the Secretariat of the United Nations.

2. A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States referred to in article 12.

*Article 18*

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

## 5. MODEL RULES ON ARBITRAL PROCEDURE\*

*Preamble*

The undertaking to arbitrate is based on the following fundamental rules:

1. Any undertaking to have recourse to arbitration in order to settle a dispute between States constitutes a legal obligation which must be carried out in good faith.

\* Text adopted by the Commission at its tenth session, in 1958, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the model rules, appears in *Yearbook of the International Law Commission, 1958*, vol. II.

2. Such an undertaking results from agreement between the parties and may relate to existing disputes or to disputes arising subsequently.

3. The undertaking must be embodied in a written instrument, whatever the form of the instrument may be.

4. The procedures suggested to States Parties to a dispute by these model rules shall not be compulsory unless the States concerned have agreed, either in the  *compromis* or in some other undertaking, to have recourse thereto.

5. The parties shall be equal in all proceedings before the arbitral tribunal.

**The existence of a dispute and the scope  
of the undertaking to arbitrate**

*Article 1*

1. If, before the constitution of the arbitral tribunal, the parties to an undertaking to arbitrate disagree as to the existence of a dispute, or as to whether the existing dispute is wholly or partly within the scope of the obligation to go to arbitration, such preliminary question shall, at the request of any of the parties and failing agreement between them upon the adoption of another procedure, be brought before the International Court of Justice for decision by means of its summary procedure.

2. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

3. If the arbitral tribunal has already been constituted, any dispute concerning arbitrability shall be referred to it.

**The compromis**

*Article 2*

1. Unless there are earlier agreements which suffice for the purpose, for example in the undertaking to arbitrate itself, the parties having recourse to arbitration shall conclude a  *compromis* which shall specify, as a minimum:

(a) The undertaking to arbitrate according to which the dispute is to be submitted to the arbitrators;

(b) The subject matter of the dispute and, if possible, the points on which the parties are or are not agreed;

(c) The method of constituting the tribunal and the number of arbitrators.

2. In addition, the *compromis* shall include any other provisions deemed desirable by the parties, in particular:

- (i) the rules of law and the principles to be applied by the tribunal, and the right, if any, conferred on it to decide *ex aequo et bono* as though it had legislative functions in the matter;
- (ii) the power, if any, of the tribunal to make recommendations to the parties;
- (iii) such power as may be conferred on the tribunal to make its own rules of procedure;
- (iv) the procedure to be followed by the tribunal; provided that, once constituted, the tribunal shall be free to override any provisions of the *compromis* which may prevent it from rendering its award;
- (v) the number of members required for the constitution of a quorum for the conduct of the hearings;
- (vi) the majority required for the award;
- (vii) the time limit within which the award shall be rendered;
- (viii) the right of the members of the tribunal to attach dissenting or individual opinions to the award, or any prohibition of such opinions;
- (ix) the languages to be employed in the course of the proceedings;
- (x) the manner in which the costs and disbursements shall be apportioned;
- (xi) the services which the International Court of Justice may be asked to render.

This enumeration is not intended to be exhaustive.

#### Constitution of the tribunal

##### *Article 3*

1. Immediately after the request made by one of the States Parties to the dispute for the submission of the dispute to arbitration, or after the decision on the arbitrability of the dispute, the parties to an undertaking to arbitrate shall take the necessary steps, either by means of the *compromis* or by special agreement, in order to arrive at the constitution of the arbitral tribunal.

2. If the tribunal is not constituted within three months from the date of the request made for the submission of the dispute to arbitra-

tion, or from the date of the decision on arbitrability, the President of the International Court of Justice shall, at the request of either party, appoint the arbitrators not yet designated. If the President is prevented from acting or is a national of one of the parties, the appointments shall be made by the Vice-President. If the Vice-President is prevented from acting or is a national of one of the parties, the appointments shall be made by the oldest member of the Court who is not a national of either party.

3. The appointments referred to in paragraph 2 shall, after consultation with the parties, be made in accordance with the provisions of the *compromis* or of any other instrument consequent upon the undertaking to arbitrate. In the absence of such provisions, the composition of the tribunal shall, after consultation with the parties, be determined by the President of the International Court of Justice or by the judge acting in his place. It shall be understood that in this event the number of the arbitrators must be uneven and should preferably be five.

4. Where provision is made for the choice of a president of the tribunal by the other arbitrators, the tribunal shall be deemed to be constituted when the president is selected. If the president has not been chosen within two months of the appointment of the arbitrators, he shall be designated in accordance with the procedure prescribed in paragraph 2.

5. Subject to the special circumstances of the case, the arbitrators shall be chosen from among persons of recognized competence in international law.

#### *Article 4*

1. Once the tribunal has been constituted, its composition shall remain unchanged until the award has been rendered.

2. A party may, however, replace an arbitrator appointed by it, provided that the tribunal has not yet begun its proceedings. Once the proceedings have begun, an arbitrator appointed by a party may not be replaced except by mutual agreement between the parties.

3. Arbitrators appointed by mutual agreement between the parties, or by agreement between arbitrators already appointed, may not be changed after the proceedings have begun, save in exceptional circumstances. Arbitrators appointed in the manner provided for in article 3, paragraph 2, may not be changed even by agreement between the parties.

4. The proceedings are deemed to have begun when the president of the tribunal or the sole arbitrator has made the first procedural order.

*Article 5*

If, whether before or after the proceedings have begun, a vacancy should occur on account of the death, incapacity or resignation of an arbitrator, it shall be filled in accordance with the procedure prescribed for the original appointment.

*Article 6*

1. A party may propose the disqualification of one of the arbitrators on account of a fact arising subsequently to the constitution of the tribunal. It may only propose the disqualification of one of the arbitrators on account of a fact arising prior to the constitution of the tribunal if it can show that the appointment was made without knowledge of that fact or as a result of fraud. In either case, the decision shall be taken by the other members of the tribunal.

2. In the case of a sole arbitrator or of the president of the tribunal, the question of disqualification shall, in the absence of agreement between the parties, be decided by the International Court of Justice on the application of one of them.

3. Any resulting vacancy or vacancies shall be filled in accordance with the procedure prescribed for the original appointments.

*Article 7*

Where a vacancy has been filled after the proceedings have begun, the proceedings shall continue from the point they had reached at the time the vacancy occurred. The newly appointed arbitrator may, however, require that the oral proceedings shall be recommenced from the beginning, if these have already been started.

## Powers of the tribunal and the process of arbitration

*Article 8*

1. When the undertaking to arbitrate or any supplementary agreement contains provisions which seem sufficient for the purpose of a *compromis*, and the tribunal has been constituted, either party may submit the dispute to the tribunal by application. If the other party refuses to answer the application on the ground that the provisions above referred to are insufficient, the tribunal shall decide whether there is already sufficient agreement between the parties on the essential elements of a *compromis* as set forth in article 2. In the case of an affirmative decision, the tribunal shall prescribe the necessary measures for the institution or continuation of the proceedings. In the contrary case, the tribunal shall

order the parties to complete or conclude the *compromis* within such time limits as it deems reasonable.

2. If the parties fail to agree or to complete the *compromis* within the time limit fixed in accordance with the preceding paragraph, the tribunal, within three months after the parties report failure to agree—or after the decision, if any, on the arbitrability of the dispute—shall proceed to hear and decide the case on the application of either party.

#### *Article 9*

The arbitral tribunal, which is the judge of its own competence, has the power to interpret the *compromis* and the other instruments on which that competence is based.

#### *Article 10*

1. In the absence of any agreement between the parties concerning the law to be applied, the tribunal shall apply:

- (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognized by civilized nations;
- (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. If the agreement between the parties so provides, the tribunal may also decide *ex aequo et bono*.

#### *Article 11*

The tribunal may not bring in a finding of *non liquet* on the ground of the silence or obscurity of the law to be applied.

#### *Article 12*

1. In the absence of any agreement between the parties concerning the procedure of the tribunal, or if the rules laid down by them are insufficient, the tribunal shall be competent to formulate or complete the rules of procedure.

2. All decisions shall be taken by a majority vote of the members of the tribunal.

*Article 13*

If the languages to be employed are not specified in the  *compromis*, this question shall be decided by the tribunal.

*Article 14*

1. The parties shall appoint agents before the tribunal to act as intermediaries between them and the tribunal.
2. They may retain counsel and advocates for the prosecution of their rights and interests before the tribunal.
3. The parties shall be entitled through their agents, counsel or advocates to submit in writing and orally to the tribunal any arguments they may deem expedient for the prosecution of their case. They shall have the right to raise objections and incidental points. The decisions of the tribunal on such matters shall be final.
4. The members of the tribunal shall have the right to put questions to agents, counsel or advocates, and to ask them for explanations. Neither the questions put nor the remarks made during the hearing are to be regarded as an expression of opinion by the tribunal or by its members.

*Article 15*

1. The arbitral procedure shall in general comprise two distinct phases: pleadings and hearing.
2. The pleadings shall consist in the communication by the respective agents to the members of the tribunal and to the opposite party of memorials, counter-memorials and, if necessary, of replies and rejoinders. Each party must attach all papers and documents cited by it in the case.
3. The time limits fixed by the  *compromis* may be extended by mutual agreement between the parties, or by the tribunal when it deems such extension necessary to enable it to reach a just decision.
4. The hearing shall consist in the oral development of the parties' arguments before the tribunal.
5. A certified true copy of every document produced by either party shall be communicated to the other party.

*Article 16*

1. The hearing shall be conducted by the president. It shall be public only if the tribunal so decides with the consent of the parties.

2. Records of the hearing shall be kept and signed by the president, registrar or secretary; only those so signed shall be authentic.

#### *Article 17*

1. After the tribunal has closed the written pleadings, it shall have the right to reject any papers and documents not yet produced which either party may wish to submit to it without the consent of the other party. The tribunal shall, however, remain free to take into consideration any such papers and documents which the agents, advocates or counsel of one or other of the parties may bring to its notice, provided that they have been made known to the other party. The latter shall have the right to require a further extension of the written pleadings so as to be able to give a reply in writing.

2. The tribunal may also require the parties to produce all necessary documents and to provide all necessary explanations. It shall take note of any refusal to do so.

#### *Article 18*

1. The tribunal shall decide as to the admissibility of the evidence that may be adduced, and shall be the judge of its probative value. It shall have the power, at any stage of the proceedings, to call upon experts and to require the appearance of witnesses. It may also, if necessary, decide to visit the scene connected with the case before it.

2. The parties shall cooperate with the tribunal in dealing with the evidence and in the other measures contemplated by paragraph 1. The tribunal shall take note of the failure of any party to comply with the obligations of this paragraph.

#### *Article 19*

In the absence of any agreement to the contrary implied by the undertaking to arbitrate or contained in the *compromis*, the tribunal shall decide on any ancillary claims which it considers to be inseparable from the subject matter of the dispute and necessary for its final settlement.

#### *Article 20*

The tribunal, or in case of urgency its president subject to confirmation by the tribunal, shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

*Article 21*

1. When, subject to the control of the tribunal, the agents, advocates and counsel have completed their presentation of the case, the proceedings shall be formally declared closed.

2. The tribunal shall, however, have the power, so long as the award has not been rendered, to reopen the proceedings after their closure, on the ground that new evidence is forthcoming of such a nature as to constitute a decisive factor, or if it considers, after careful consideration, that there is a need for clarification on certain points.

*Article 22*

1. Except where the claimant admits the soundness of the defendant's case, discontinuance of the proceedings by the claimant party shall not be accepted by the tribunal without the consent of the defendant.

2. If the case is discontinued by agreement between the parties, the tribunal shall take note of the fact.

*Article 23*

If the parties reach a settlement, it shall be taken note of by the tribunal. At the request of either party, the tribunal may, if it thinks fit, embody the settlement in an award.

*Article 24*

The award shall normally be rendered within the period fixed by the *compromis*, but the tribunal may decide to extend this period if it would otherwise be unable to render the award.

*Article 25*

1. Whenever one of the parties has not appeared before the tribunal, or has failed to present its case, the other party may call upon the tribunal to decide in favour of its case.

2. The arbitral tribunal may grant the defaulting party a period of grace before rendering the award.

3. On the expiry of this period of grace, the tribunal shall render an award after it has satisfied itself that it has jurisdiction. It may only decide in favour of the submissions of the party appearing, if satisfied that they are well founded in fact and in law.

### Deliberations of the Tribunal

#### *Article 26*

The deliberations of the tribunal shall remain secret.

#### *Article 27*

1. All the arbitrators shall participate in the decisions.
2. Except in cases where the *compromis* provides for a quorum, or in cases where the absence of an arbitrator occurs without the permission of the president of the tribunal, the arbitrator who is absent shall be replaced by an arbitrator nominated by the President of the International Court of Justice. In the case of such replacement the provisions of article 7 shall apply.

### The award

#### *Article 28*

1. The award shall be rendered by a majority vote of the members of the tribunal. It shall be drawn up in writing and shall bear the date on which it was rendered. It shall contain the names of the arbitrators and shall be signed by the president and by the members of the tribunal who have voted for it. The arbitrators may not abstain from voting.
2. Unless otherwise provided in the *compromis*, any member of the tribunal may attach his separate or dissenting opinion to the award.
3. The award shall be deemed to have been rendered when it has been read in open court, the agents of the parties being present or having been duly summoned to appear.
4. The award shall immediately be communicated to the parties.

#### *Article 29*

The award shall, in respect of every point on which it rules, state the reasons on which it is based.

#### *Article 30*

Once rendered, the award shall be binding upon the parties. It shall be carried out in good faith immediately, unless the tribunal has allowed a time limit for the carrying out of the award or of any part of it.

*Article 31*

During a period of one month after the award has been rendered and communicated to the parties, the tribunal may, either of its own accord or at the request of either party, rectify any clerical, typographical or arithmetical error in the award, or any obvious error of a similar nature.

*Article 32*

The arbitral award shall constitute a definitive settlement of the dispute.

## Interpretation of the award

*Article 33*

1. Any dispute between the parties as to the meaning and scope of the award shall, at the request of either party and within three months of the rendering of the award, be referred to the tribunal which rendered the award.

2. If, for any reason, it is found impossible to submit the dispute to the tribunal which rendered the award, and if within the above-mentioned time limit the parties have not agreed upon another solution, the dispute may be referred to the International Court of Justice at the request of either party.

3. In the event of a request for interpretation, it shall be for the tribunal or for the International Court of Justice, as the case may be, to, decide whether and to what extent execution of the award shall be stayed pending a decision on the request.

*Article 34*

Failing a request for interpretation, or after a decision on such a request has been made, all pleadings and documents in the case shall be deposited by the president of the tribunal with the International Bureau of the Permanent Court of Arbitration or with another depositary selected by agreement between the parties.

## Validity and annulment of the award

*Article 35*

The validity of an award may be challenged by either party on one or more of the following grounds:

- (a) that the tribunal has exceeded its powers;

- (b) that there was corruption on the part of a member of the tribunal;
- (c) that there has been a failure to state the reasons for the award or a serious departure from a fundamental rule of procedure;
- (d) that the undertaking to arbitrate or the  *compromis* is a nullity.

#### *Article 36*

1. If, within three months of the date on which the validity of the award is contested, the parties have not agreed on another tribunal, the International Court of Justice shall be competent to declare the total or partial nullity of the award on the application of either party.

2. In the cases covered by article 35, subparagraphs (a) and (c), validity must be contested within six months of the rendering of the award, and in the cases covered by subparagraphs (b) and (d) within six months of the discovery of the corruption or of the facts giving rise to the claim of nullity, and in any case within ten years of the rendering of the award.

3. The Court may, at the request of the interested party, and if circumstances so require, grant a stay of execution pending the final decision on the application for annulment.

#### *Article 37*

If the award is declared invalid by the International Court of Justice, the dispute shall be submitted to a new tribunal constituted by agreement between the parties, or, failing such agreement, in the manner provided by article 3.

#### Revision of the award

##### *Article 38*

1. An application for the revision of the award may be made by either party on the ground of the discovery of some fact of such a nature as to constitute a decisive factor, provided that when the award was rendered that fact was unknown to the tribunal and to the party requesting revision, and that such ignorance was not due to the negligence of the party requesting revision.

2. The application for revision must be made within six months of the discovery of the new fact, and in any case within ten years of the rendering of the award.

3. In the proceedings for revision, the tribunal shall, in the first instance, make a finding as to the existence of the alleged new fact and rule on the admissibility of the application.

4. If the tribunal finds the application admissible, it shall then decide on the merits of the dispute.

5. The application for revision shall, whenever possible, be made to the tribunal which rendered the award.

6. If, for any reason, it is not possible to make the application to the tribunal which rendered the award, it may, unless the parties otherwise agree, be made by either of them to the International Court of Justice.

7. The tribunal or the Court may, at the request of the interested party, and if circumstances so require, grant a stay of execution pending the final decision on the application for revision.

#### 6. DRAFT ARTICLES ON MOST-FAVoured-NATION CLAUSES\*

##### *Article 1. Scope of the present articles*

The present articles apply to most-favoured-nation clauses contained in treaties between States.

##### *Article 2. Use of terms*

###### 1. For the purposes of the present articles:

(a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) "granting State" means a State which has undertaken to accord most-favoured-nation treatment;

(c) "beneficiary State" means a State to which a granting State has undertaken to accord most-favoured-nation treatment;

(d) "third State" means any State other than the granting State or the beneficiary State;

(e) "condition of compensation" means a condition providing for compensation of any kind agreed between the granting State and the beneficiary State, in a treaty containing a most-favoured-nation clause or otherwise;

\* Text adopted by the Commission at its thirtieth session, in 1978, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1978*, vol. II, Part Two.

(f) "condition of reciprocal treatment" means a condition of compensation providing for the same or, as the case may be, equivalent treatment by the beneficiary State of the granting State or of persons or things in a determined relationship with it as that extended by the granting State to a third State or to persons or things in the same relationship with that third State.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

#### *Article 3. Clauses not within the scope of the present articles*

The fact that the present articles do not apply to a clause on most-favoured treatment other than a most-favoured-nation clause referred to in article 4 shall not affect:

- (a) the legal effect of such a clause;
- (b) the application to it of any of the rules set forth in the present articles to which it would be subject under international law independently of the present articles.

#### *Article 4. Most-favoured-nation clause*

A most-favoured-nation clause is a treaty provision whereby a State undertakes an obligation towards another State to accord most-favoured-nation treatment in an agreed sphere of relations.

#### *Article 5. Most-favoured-nation treatment*

Most-favoured-nation treatment is treatment accorded by the granting State to the beneficiary State, or to persons or things in a determined relationship with that State, not less favourable than treatment extended by the granting State to a third State or to persons or things in the same relationship with that third State.

#### *Article 6. Clauses in international agreements between States to which other subjects of international law are also parties*

Notwithstanding the provisions of articles 1, 2, 4 and 5, the present articles shall apply to the relations of States as between themselves under an international agreement containing a clause on most-favoured-nation treatment to which other subjects of international law are also parties.

*Article 7. Legal basis of most-favoured-nation treatment*

Nothing in the present articles shall imply that a State is entitled to be accorded most-favoured-nation treatment by another State otherwise than on the basis of an international obligation undertaken by the latter State.

*Article 8. The source and scope of most-favoured-nation treatment*

1. The right of the beneficiary State to most-favoured-nation treatment arises only from the most-favoured-nation clause referred to in article 4, or from the clause on most-favoured-nation treatment referred to in article 6, in force between the granting State and the beneficiary State.

2. The most-favoured-nation treatment to which the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, is entitled under a clause referred to in paragraph 1 is determined by the treatment extended by the granting State to a third State or to persons or things in the same relationship with that third State.

*Article 9. Scope of rights under a most-favoured-nation clause*

1. Under a most-favoured-nation clause the beneficiary State acquires, for itself or for the benefit of persons or things in a determined relationship with it, only those rights which fall within the limits of the subject matter of the clause.

2. The beneficiary State acquires the rights under paragraph 1 only in respect of persons or things which are specified in the clause or implied from its subject matter.

*Article 10. Acquisition of rights under a most-favoured-nation clause*

1. Under a most-favoured-nation clause the beneficiary State acquires the right to most-favoured-nation treatment only if the granting State extends to a third State treatment within the limits of the subject matter of the clause.

2. The beneficiary State acquires rights under paragraph 1 in respect of persons or things in a determined relationship with it only if they:

(a) belong to the same category of persons or things as those in a determined relationship with a third State which benefit from the treatment extended to them by the granting State and

(b) have the same relationship with the beneficiary State as the persons and things referred to in subparagraph (a) have with that third State.

*Article 11. Effect of a most-favoured-nation clause not made subject to compensation*

If a most-favoured-nation clause is not made subject to a condition of compensation, the beneficiary State acquires the right to most-favoured-nation treatment without the obligation to accord any compensation to the granting State.

*Article 12. Effect of a most-favoured-nation clause made subject to compensation*

If a most-favoured-nation clause is made subject to a condition of compensation, the beneficiary State acquires the right to most-favoured-nation treatment only upon according the agreed compensation to the granting State.

*Article 13. Effect of a most-favoured-nation clause made subject to reciprocal treatment*

If a most-favoured-nation clause is made subject to a condition of reciprocal treatment, the beneficiary State acquires the right to most-favoured-nation treatment only upon according the agreed reciprocal treatment to the granting State.

*Article 14. Compliance with agreed terms and conditions*

The exercise of rights arising under a most-favoured-nation clause for the beneficiary State or for persons or things in a determined relationship with that State is subject to compliance with the relevant terms and conditions laid down in the treaty containing the clause or otherwise agreed between the granting State and the beneficiary State.

*Article 15. Irrelevance of the fact that treatment is extended to a third State against compensation*

The acquisition without compensation of rights by the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, under a most-favoured-nation clause not made subject to a condition of compensation is not affected by the mere fact that the treatment by the granting State of a third State or of persons or things in the same relationship with that third State has been extended against compensation.

*Article 16. Irrelevance of limitations agreed between  
the granting State and a third State*

The acquisition of rights by the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, under a most-favoured-nation clause is not affected by the mere fact that the treatment by the granting State of a third State or of persons or things in the same relationship with that third State has been extended under an international agreement between the granting State and the third State limiting the application of that treatment to relations between them.

*Article 17. Irrelevance of the fact that treatment is extended to a third  
State under a bilateral or a multilateral agreement*

The acquisition of rights by the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, under a most-favoured-nation clause is not affected by the mere fact that the treatment by the granting State of a third State or of persons or things in the same relationship with that third State has been extended under an international agreement, whether bilateral or multilateral.

*Article 18. Irrelevance of the fact that treatment is extended to a  
third State as national treatment*

The acquisition of rights by the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, under a most-favoured-nation clause is not affected by the mere fact that the treatment by the granting State of a third State or of persons or things in the same relationship with that third State has been extended as national treatment.

*Article 19. Most-favoured-nation treatment and national or other  
treatment with respect to the same subject matter*

1. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause is not affected by the mere fact that the granting State has agreed to accord as well to that beneficiary State national treatment or other treatment with respect to the same subject matter as that of the most-favoured-nation clause.

2. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause is without prejudice to national treatment or other treatment which the granting State

has accorded to that beneficiary State with respect to the same subject matter as that of the most-favoured-nation clause.

*Article 20. Arising of rights under a most-favoured-nation clause*

1. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause not made subject to a condition of compensation arises at the moment when the relevant treatment is extended by the granting State to a third State or to persons or things in the same relationship with that third State.

2. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause made subject to a condition of compensation arises at the moment when the relevant treatment is extended by the granting State to a third State or to persons or things in the same relationship with that third State and the agreed compensation is accorded by the beneficiary State to the granting State.

3. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause made subject to a condition of reciprocal treatment arises at the moment when the relevant treatment is extended by the granting State to a third State or to persons or things in the same relationship with that third State and the agreed reciprocal treatment is accorded by the beneficiary State to the granting State.

*Article 21. Termination or suspension of rights under a most-favoured-nation clause*

1. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause is terminated or suspended at the moment when the extension of the relevant treatment by the granting State to a third State or to persons or things in the same relationship with that third State is terminated or suspended.

2. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause made subject to a condition of compensation is equally terminated or suspended at the moment of termination or suspension by the beneficiary State of the agreed compensation.

3. The right of the beneficiary State for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause made subject to a

condition of reciprocal treatment is equally terminated or suspended at the moment of termination or suspension by the beneficiary State of the agreed reciprocal treatment.

*Article 22. Compliance with the laws and regulations  
of the granting State*

The exercise of rights arising under a most-favoured-nation clause for the beneficiary State or for persons or things in a determined relationship with that State is subject to compliance with the relevant laws and regulations of the granting State. Those laws and regulations, however, shall not be applied in such a manner that the treatment of the beneficiary State or of persons or things in a determined relationship with that State is less favourable than that of the third State or of persons or things in the same relationship with that third State.

*Article 23. The most-favoured-nation clause in relation to treatment  
under a generalized system of preferences*

A beneficiary State is not entitled, under a most-favoured-nation clause, to treatment extended by a developed granting State to a developing third State on a non-reciprocal basis within a scheme of generalized preferences, established by that granting State, which conforms with a generalized system of preferences recognized by the international community of States as a whole or, for the States members of a competent international organization, adopted in accordance with its relevant rules and procedures.

*Article 24. The most-favoured-nation clause in relation to  
arrangements between developing States*

A developed beneficiary State is not entitled under a most-favoured-nation clause to any preferential treatment in the field of trade extended by a developing granting State to a developing third State in conformity with the relevant rules and procedures of a competent international organization of which the States concerned are members.

*Article 25. The most-favoured-nation clause in relation to treatment  
extended to facilitate frontier traffic*

1. A beneficiary State other than a contiguous State is not entitled under a most-favoured-nation clause to the treatment extended by the granting State to a contiguous third State in order to facilitate frontier traffic.

2. A contiguous beneficiary State is entitled under a most-favoured-nation clause to treatment not less favourable than the treatment extended by the granting State to a contiguous third State in order to facilitate frontier traffic only if the subject-matter of the clause is the facilitation of frontier traffic.

*Article 26. The most-favoured-nation clause in relation to rights and facilities extended to a landlocked third State*

1. A beneficiary State other than a landlocked State is not entitled under a most-favoured-nation clause to rights and facilities extended by the granting State to a landlocked third State in order to facilitate its access to and from the sea.

2. A landlocked beneficiary State is entitled under a most-favoured-nation clause to the rights and facilities extended by the granting State to a landlocked third State in order to facilitate its access to and from the sea only if the subject matter of the clause is the facilitation of access to and from the sea.

*Article 27. Cases of State succession, State responsibility and outbreak of hostilities*

The provisions of the present articles shall not prejudice any question that may arise in regard to a most-favoured-nation clause from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

*Article 28. Non-retroactivity of the present articles*

1. Without prejudice to the application of any rule set forth in the present articles to which most-favoured-nation clauses would be subject under international law independently of these articles, they apply only to a most-favoured-nation clause in a treaty which is concluded by States after the entry into force of the present articles with regard to such States.

2. Without prejudice to the application of any rule set forth in the present articles to which clauses on most-favoured-nation treatment would be subject under international law independently of these articles, they apply to the relations of States as between themselves only under a clause on most-favoured-nation treatment contained in an international agreement which is concluded by States and other subjects of international law after the entry into force of the present articles with regard to such States.

*Article 29. Provisions otherwise agreed*

The present articles are without prejudice to any provision on which the granting State and the beneficiary State may otherwise agree.

*Article 30. New rules of international law in favour of developing countries*

The present articles are without prejudice to the establishment of new rules of international law in favour of developing countries.

7. DRAFT ARTICLES ON THE STATUS OF THE DIPLOMATIC COURIER  
AND THE DIPLOMATIC BAG NOT ACCCOMPANIED BY  
DIPLOMATIC COURIER AND DRAFT OPTIONAL PROTOCOLS\*

(a) DRAFT ARTICLES ON THE STATUS OF THE DIPLOMATIC COURIER  
AND THE DIPLOMATIC BAG NOT ACCCOMPANIED  
BY DIPLOMATIC COURIER

Part I. General provisions

*Article 1. Scope of the present articles*

The present articles apply to the diplomatic courier and the diplomatic bag employed for the official communications of a State with its missions, consular posts or delegations, wherever situated, and for the official communications of those missions, consular posts or delegations with the sending State or with each other.

*Article 2. Couriers and bags not within the scope  
of the present articles*

The fact that the present articles do not apply to couriers and bags employed for the official communications of special missions or international organizations shall not affect:

- (a) the legal status of such couriers and bags;
- (b) the application to such couriers and bags of any rules set forth in the present articles which would be applicable under international law independently of the present articles.

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\* Text adopted by the Commission at its forty-first session, in 1989, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles and draft optional protocols thereto, appears in *Yearbook of the International Law Commission, 1989*, vol. II (Part Two).

*Article 3. Use of terms*

1. For the purposes of the present articles:

(1) "diplomatic courier" means a person duly authorized by the sending State, either on a regular basis or for a special occasion as a courier *ad hoc*, as:

(a) a diplomatic courier within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

(b) a consular courier within the meaning of the Vienna Convention on Consular Relations of 24 April 1963; or

(c) a courier of a permanent mission, a permanent observer mission, a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975;

who is entrusted with the custody, transportation and delivery of the diplomatic bag and is employed for the official communications referred to in article 1;

(2) "diplomatic bag" means the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by diplomatic courier or not, which are used for the official communications referred to in article 1 and which bear visible external marks of their character as:

(a) a diplomatic bag within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

(b) a consular bag within the meaning of the Vienna Convention on Consular Relations of 24 April 1963; or

(c) a bag of a permanent mission, a permanent observer mission, a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975;

(3) "sending State" means a State dispatching a diplomatic bag to or from its missions, consular posts or delegations;

(4) "receiving State" means a State having on its territory missions, consular posts or delegations of the sending State which receive or dispatch a diplomatic bag;

(5) "transit State" means a State through whose territory a diplomatic courier or a diplomatic bag passes in transit;

(6) "mission" means:

(a) a permanent diplomatic mission within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961; and

(b) a permanent mission or a permanent observer mission within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975;

(7) "consular post" means a consulate-general, consulate, vice-consulate or consular agency within the meaning of the Vienna Convention on Consular Relations of 24 April 1963;

(8) "delegation" means a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975;

(9) "international organization" means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or the internal law of any State.

#### *Article 4. Freedom of official communications*

1. The receiving State shall permit and protect the official communications of the sending State, effected through the diplomatic courier or the diplomatic bag, as referred to in article 1.

2. The transit State shall accord to the official communications of the sending State, effected through the diplomatic courier or the diplomatic bag, the same freedom and protection as is accorded by the receiving State.

#### *Article 5. Duty to respect the laws and regulations of the receiving State and the transit State*

1. The sending State shall ensure that the privileges and immunities accorded to its diplomatic courier and diplomatic bag are not used in a manner incompatible with the object and purpose of the present articles.

2. Without prejudice to the privileges and immunities accorded to him, it is the duty of the diplomatic courier to respect the laws and regulations of the receiving State and the transit State.

*Article 6. Non-discrimination and reciprocity*

1. In the application of the provisions of the present articles, the receiving State or the transit State shall not discriminate as between States.
2. However, discrimination shall not be regarded as taking place:
  - (a) where the receiving State or the transit State applies any of the provisions of the present articles restrictively because of a restrictive application of that provision to its diplomatic courier or diplomatic bag by the sending State;
  - (b) where States by custom or agreement extend to each other more favourable treatment with respect to their diplomatic couriers and diplomatic bags than is required by the present articles.

*Part II. Status of the diplomatic courier and the captain  
of a ship or aircraft entrusted with the diplomatic bag**Article 7. Appointment of the diplomatic courier*

Subject to the provisions of articles 9 and 12, the sending State or its missions, consular posts or delegations may freely appoint the diplomatic courier.

*Article 8. Documentation of the diplomatic courier*

The diplomatic courier shall be provided with an official document indicating his status and essential personal data, including his name and, where appropriate, his official position or rank, as well as the number of packages constituting the diplomatic bag which is accompanied by him and their identification and destination.

*Article 9. Nationality of the diplomatic courier*

1. The diplomatic courier should in principle be of the nationality of the sending State.
2. The diplomatic courier may not be appointed from among persons having the nationality of the receiving State except with the consent of that State, which may be withdrawn at any time. However, when the diplomatic courier is performing his functions in the territory of the receiving State, withdrawal of consent shall not take effect until he has delivered the diplomatic bag to its consignee.

3. The receiving State may reserve the right provided for in paragraph 2 also with regard to:

- (a) nationals of the sending State who are permanent residents of the receiving State;

- (b) nationals of a third State who are not also nationals of the sending State.

*Article 10. Functions of the diplomatic courier*

The functions of the diplomatic courier consist in taking custody of the diplomatic bag entrusted to him and transporting and delivering it to its consignee.

*Article 11. End of the functions of the diplomatic courier*

The functions of the diplomatic courier come to an end, *inter alia*, upon:

- (a) fulfilment of his functions or his return to the country of origin;
- (b) notification by the sending State to the receiving State and, where necessary, the transit State that his functions have been terminated;
- (c) notification by the receiving State to the sending State that, in accordance with paragraph 2 of article 12, it ceases to recognize him as a diplomatic courier.

*Article 12. The diplomatic courier declared persona non grata or not acceptable*

1. The receiving State may, at any time and without having to explain its decision, notify the sending State that the diplomatic courier is persona non grata or not acceptable. In any such case, the sending State shall, as appropriate, either recall the diplomatic courier or terminate his functions to be performed in the receiving State. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1, the receiving State may cease to recognize the person concerned as a diplomatic courier.

*Article 13. Facilities accorded to the diplomatic courier*

1. The receiving State or the transit State shall accord to the diplomatic courier the facilities necessary for the performance of his functions.

2. The receiving State or the transit State shall, upon request and to the extent practicable, assist the diplomatic courier in obtaining temporary accommodation and in establishing contact through the

telecommunications network with the sending State and its missions, consular posts or delegations, wherever situated.

*Article 14. Entry into the territory of the receiving State or the transit State*

1. The receiving State or the transit State shall permit the diplomatic courier to enter its territory in the performance of his functions.
2. Visas, where required, shall be granted by the receiving State or the transit State to the diplomatic courier as promptly as possible.

*Article 15. Freedom of movement*

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State or the transit State shall ensure to the diplomatic courier such freedom of movement and travel in its territory as is necessary for the performance of his functions.

*Article 16. Personal protection and inviolability*

The diplomatic courier shall be protected by the receiving State or the transit State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

*Article 17. Inviolability of temporary accommodation*

1. The temporary accommodation of the diplomatic courier carrying a diplomatic bag shall, in principle, be inviolable. However:
  - (a) prompt protective action may be taken if required in case of fire or other disaster;
  - (b) inspection or search may be undertaken where serious grounds exist for believing that there are in the temporary accommodation articles the possession, import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State or the transit State.
2. In the case referred to in paragraph 1 (a), measures necessary for the protection of the diplomatic bag and its inviolability shall be taken.
3. In the case referred to in paragraph 1 (b), inspection or search shall be conducted in the presence of the diplomatic courier and on condition that it be effected without infringing the inviolability either of the person of the diplomatic courier or of the diplomatic bag and would not

unduly delay or impede the delivery of the diplomatic bag. The diplomatic courier shall be given the opportunity to communicate with his mission in order to invite a member of that mission to be present when the inspection or search takes place.

4. The diplomatic courier shall, to the extent practicable, inform the authorities of the receiving State or the transit State of the location of his temporary accommodation.

*Article 18. Immunity from jurisdiction*

1. The diplomatic courier shall enjoy immunity from the criminal jurisdiction of the receiving State or the transit State in respect of acts performed in the exercise of his functions.

2. He shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State or the transit State in respect of acts performed in the exercise of his functions. This immunity shall not extend to an action for damages arising from an accident involving a vehicle the use of which may have entailed the liability of the courier to the extent that those damages are not recoverable from insurance. Pursuant to the laws and regulations of the receiving State or the transit State, the courier shall, when driving a motor vehicle, be required to have insurance coverage against third-party risks.

3. No measures of execution may be taken in respect of the diplomatic courier, except in cases where he does not enjoy immunity under paragraph 2 and provided that the measures concerned can be taken without infringing the inviolability of his person, his temporary accommodation or the diplomatic bag entrusted to him.

4. The diplomatic courier is not obliged to give evidence as a witness on matters connected with the exercise of his functions. He may, however, be required to give evidence on other matters, provided that this would not unduly delay or impede the delivery of the diplomatic bag.

5. The immunity of the diplomatic courier from the jurisdiction of the receiving State or the transit State does not exempt him from the jurisdiction of the sending State.

*Article 19. Exemption from customs duties, dues and taxes*

1. The receiving State or the transit State shall, in accordance with such laws and regulations as it may adopt, permit entry of articles for the personal use of the diplomatic courier carried in his personal baggage and grant exemption from all customs duties, taxes and related

charges on such articles other than charges levied for specific services rendered.

2. The diplomatic courier shall, in the performance of his functions, be exempt in the receiving State or the transit State from all dues and taxes, national, regional or municipal, except for indirect taxes of a kind which are normally incorporated in the price of goods or services and charges levied for specific services rendered.

*Article 20. Exemption from examination and inspection*

1. The diplomatic courier shall be exempt from personal examination.

2. The personal baggage of the diplomatic courier shall be exempt from inspection, unless there are serious grounds for believing that it contains articles not for the personal use of the diplomatic courier or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State or the transit State. An inspection in such a case shall be conducted in the presence of the diplomatic courier.

*Article 21. Beginning and end of privileges and immunities*

1. The diplomatic courier shall enjoy privileges and immunities from the moment he enters the territory of the receiving State or the transit State in order to perform his functions, or, if he is already in the territory of the receiving State, from the moment he begins to exercise his functions.

2. The privileges and immunities of the diplomatic courier shall cease at the moment when he leaves the territory of the receiving State or the transit State, or on the expiry of a reasonable period in which to do so. However, the privileges and immunities of the diplomatic courier *ad hoc* who is a resident of the receiving State shall cease at the moment when he has delivered to the consignee the diplomatic bag in his charge.

3. Notwithstanding paragraph 2, immunity shall continue to subsist with respect to acts performed by the diplomatic courier in the exercise of his functions.

*Article 22. Waiver of immunities*

1. The sending State may waive the immunities of the diplomatic courier.

2. The waiver shall, in all cases, be express and shall be communicated in writing to the receiving State or the transit State.

3. However, the initiation of proceedings by the diplomatic courier shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction in respect of judicial proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement or decision, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of the diplomatic courier in respect of a civil action, it shall use its best endeavours to bring about an equitable settlement of the case.

*Article 23. Status of the captain of a ship or aircraft entrusted with the diplomatic bag*

1. The captain of a ship or aircraft in commercial service which is scheduled to arrive at an authorized port of entry may be entrusted with the diplomatic bag.

2. The captain shall be provided with an official document indicating the number of packages constituting the bag entrusted to him, but he shall not be considered to be a diplomatic courier.

3. The receiving State shall permit a member of a mission, consular post or delegation of the sending State to have unimpeded access to the ship or aircraft in order to take possession of the bag directly and freely from the captain or to deliver the bag directly and freely to him.

Part III. Status of the diplomatic bag

*Article 24. Identification of the diplomatic bag*

1. The packages constituting the diplomatic bag shall bear visible external marks of their character.

2. The packages constituting the diplomatic bag, if not accompanied by a diplomatic courier, shall also bear visible indications of their destination and consignee.

*Article 25. Contents of the diplomatic bag*

1. The diplomatic bag may contain only official correspondence, and documents or articles intended exclusively for official use.

2. The sending State shall take appropriate measures to prevent the dispatch through its diplomatic bag of items other than those referred to in paragraph 1.

*Article 26. Transmission of the diplomatic bag by postal service or any mode of transport*

The conditions governing the use of the postal service or of any mode of transport, established by the relevant international or national rules, shall apply to the transmission of the packages constituting the diplomatic bag in such a manner as to ensure the best possible facilities for the dispatch of the bag.

*Article 27. Safe and rapid dispatch of the diplomatic bag*

The receiving State or the transit State shall facilitate the safe and rapid dispatch of the diplomatic bag and shall, in particular, ensure that such dispatch is not unduly delayed or impeded by formal or technical requirements.

*Article 28. Protection of the diplomatic bag*

1. The diplomatic bag shall be inviolable wherever it may be; it shall not be opened or detained and shall be exempt from examination directly or through electronic or other technical devices.

2. Nevertheless, if the competent authorities of the receiving State or the transit State have serious reason to believe that the consular bag contains something other than the correspondence, documents or articles referred to in paragraph 1 of article 25, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

*Article 29. Exemption from customs duties and taxes*

The receiving State or the transit State shall, in accordance with such laws and regulations as it may adopt, permit the entry, transit and departure of the diplomatic bag and grant exemption from customs duties, taxes and related charges other than charges for storage, cartage and similar services rendered.

Part IV. Miscellaneous provisions

*Article 30. Protective measures in case of force majeure or other exceptional circumstances*

1. Where, because of reasons of *force majeure* or other exceptional circumstances, the diplomatic courier, or the captain of a ship or aircraft in commercial service to whom the diplomatic bag has been entrusted, or any other member of the crew, is no longer able to maintain custody

of the bag, the receiving State or the transit State shall inform the sending State of the situation and take appropriate measures with a view to ensuring the integrity and safety of the bag until the authorities of the sending State recover possession of it.

2. Where, because of reasons of *force majeure* or other exceptional circumstances, the diplomatic courier or the unaccompanied diplomatic bag is present in the territory of a State not initially foreseen as a transit State, that State, where aware of the situation, shall accord to the courier and the bag the protection provided for under the present articles and, in particular, extend facilities for their prompt and safe departure from its territory.

*Article 31. Non-recognition of States or Governments or absence of diplomatic or consular relations*

The State on whose territory an international organization has its seat or an office or a meeting of an international organ or a conference is held shall grant the facilities, privileges and immunities accorded under the present articles to the diplomatic courier and the diplomatic bag of a sending State directed to or from its mission or delegation, notwithstanding the non-recognition of one of those States or its Government by the other State or the non-existence of diplomatic or consular relations between them.

*Article 32. Relationship between the present articles and other conventions and agreements*

1. The present articles shall, as between Parties to them and to the conventions listed in subparagraph (1) of paragraph 1 of article 3, supplement the rules on the status of the diplomatic courier and the diplomatic bag contained in those conventions.

2. The provisions of the present articles are without prejudice to other international agreements in force as between Parties to them.

3. Nothing in the present articles shall preclude the Parties thereto from concluding international agreements relating to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, provided that such new agreements are not incompatible with the object and purpose of the present articles and do not affect the enjoyment by the other Parties to the present articles of their rights or the performance of their obligations under the present articles.

(b) DRAFT OPTIONAL PROTOCOL ONE ON THE STATUS OF THE COURIER AND THE BAG OF SPECIAL MISSIONS

The States Parties to the present Protocol and to the articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, hereinafter referred to as "the articles,"

Have agreed as follows:

*Article I*

The articles also apply to a courier and a bag employed for the official communications of a State with its special missions within the meaning of the Convention on Special Missions of 8 December 1969, wherever situated, and for the official communications of those missions with the sending State or with its other missions, consular posts or delegations.

*Article II*

For the purposes of the articles:

(a) "mission" also means a special mission within the meaning of the Convention on Special Missions of 8 December 1969;

(b) "diplomatic courier" also means a person duly authorized by the sending State as a courier of a special mission within the meaning of the Convention on Special Missions of 8 December 1969 who is entrusted with the custody, transportation and delivery of a diplomatic bag and is employed for the official communications referred to in article I of the present Protocol;

(c) "diplomatic bag" also means the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by a courier or not, which are used for the official communications referred to in article I of the present Protocol and which bear visible external marks of their character as a bag of a special mission within the meaning of the Convention on Special Missions of 8 December 1969.

*Article III*

1. The present Protocol shall, as between Parties to it and to the Convention on Special Missions of 8 December 1969, supplement the rules on the status of the diplomatic courier and the diplomatic bag contained in that Convention.

2. The provisions of the present Protocol are without prejudice to other international agreements in force as between parties to them.

3. Nothing in the present Protocol shall preclude the Parties thereto from concluding international agreements relating to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, provided that such new agreements are not incompatible with the object and purpose of the articles and do not affect the enjoyment by the other Parties to the articles of their rights or the performance of their obligations under the articles.

(c) DRAFT OPTIONAL PROTOCOL TWO ON THE STATUS OF THE  
COURIER AND THE BAG OF INTERNATIONAL  
ORGANIZATIONS OF A UNIVERSAL CHARACTER

The States Parties to the present Protocol and to the articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, hereinafter referred to as "the articles,"

Have agreed as follows:

*Article I*

The articles also apply to a courier and a bag employed for the official communications of an international organization of a universal character:

- (a) with its missions and offices, wherever situated, and for the official communications of those missions and offices with each other;
- (b) with other international organizations of a universal character.

*Article II*

For the purposes of the articles:

(a) "diplomatic courier" also means a person duly authorized by the international organization as a courier who is entrusted with the custody, transportation and delivery of the bag and is employed for the official communications referred to in article I of the present Protocol;

(b) "diplomatic bag" also means the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by a courier or not, which are used for the official communications referred to in article I of the present Protocol and which bear visible external marks of their character as a bag of an international organization.

*Article III*

- 1. The present Protocol shall, as between Parties to it and to the Convention on the Privileges and Immunities of the United Nations of

13 February 1946 or the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947, supplement the rules on the status of the diplomatic courier and the diplomatic bag contained in those Conventions.

2. The provisions of the present Protocol are without prejudice to other international agreements in force as between parties to them.

3. Nothing in the present Protocol shall preclude the Parties thereto from concluding international agreements relating to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, provided that such new agreements are not incompatible with the object and purpose of the articles and do not affect the enjoyment by the other Parties to the articles of their rights or the performance of their obligations under the articles.

8. DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT,  
ANNEX AND APPENDICES I TO III\*

(a) DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT

*The States Parties to this Statute,*

Desiring to further international cooperation to enhance the effective prosecution and suppression of crimes of international concern, and for that purpose to establish an international criminal court;

Emphasizing that such a court is intended to exercise jurisdiction only over the most serious crimes of concern to the international community as a whole;

Emphasizing further that such a court is intended to be complementary to national criminal justice systems in cases where such trial procedures may not be available or may be ineffective;

*Have agreed as follows:*

Part One. Establishment of the Court

Article 1. *The Court*

There is established an International Criminal Court ("the Court"), whose jurisdiction and functioning shall be governed by the provisions of this Statute.

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\* Text adopted by the Commission at its forty-sixth session, in 1994, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1994*, vol. II (Part Two).

*Article 2. Relationship of the Court to the United Nations*

The President, with the approval of the States Parties to this Statute (“States Parties”), may conclude an agreement establishing an appropriate relationship between the Court and the United Nations.

*Article 3. Seat of the Court*

1. The seat of the Court shall be established at . . . in . . . (“the host State”).

2. The President, with the approval of the States Parties, may conclude an agreement with the host State establishing the relationship between that State and the Court.

3. The Court may exercise its powers and functions on the territory of any State Party and, by special agreement, on the territory of any other State.

*Article 4. Status and legal capacity*

1. The Court is a permanent institution open to States Parties in accordance with this Statute. It shall act when required to consider a case submitted to it.

2. The Court shall enjoy in the territory of each State Party such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

**Part Two. Composition and administration of the Court***Article 5. Organs of the Court*

The Court consists of the following organs:

- (a) a Presidency, as provided in article 8;
- (b) an Appeals Chamber, Trial Chambers and other chambers, as provided in article 9;
- (c) a Procuracy, as provided in article 12;
- (d) a Registry, as provided in article 13.

*Article 6. Qualification and election of judges*

1. The judges of the Court shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices, and have, in addition:

- (a) criminal trial experience;
- (b) recognized competence in international law.

2. Each State Party may nominate for election not more than two persons, of different nationality, who possess the qualification referred to in paragraph 1 (a) or that referred to in paragraph 1 (b), and who are willing to serve as may be required on the Court.

3. Eighteen judges shall be elected by an absolute majority vote of the States Parties by secret ballot. Ten judges shall first be elected, from among the persons nominated as having the qualification referred to in paragraph 1 (a). Eight judges shall then be elected, from among the persons nominated as having the qualification referred to in paragraph 1 (b).

4. No two judges may be nationals of the same State.

5. States Parties should bear in mind in the election of the judges that the representation of the principal legal systems of the world should be assured.

6. Judges hold office for a term of nine years and, subject to paragraph 7 and article 7, paragraph 2, are not eligible for re-election. A judge shall, however, continue in office in order to complete any case the hearing of which has commenced.

7. At the first election, six judges chosen by lot shall serve for a term of three years and are eligible for re-election; six judges chosen by lot shall serve for a term of six years; and the remainder shall serve for a term of nine years.

8. Judges nominated as having the qualification referred to in paragraphs 1 (a) or 1 (b), as the case may be, shall be replaced by persons nominated as having the same qualification.

#### *Article 7. Judicial vacancies*

1. In the event of a vacancy, a replacement judge shall be elected in accordance with article 6.

2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term, and if that period is less than five years is eligible for re-election for a further term.

#### *Article 8. The Presidency*

1. The President, the first and second Vice-Presidents and two alternate Vice-Presidents shall be elected by an absolute majority of the judges. They shall serve for a term of three years or until the end of their term of office as judges, whichever is earlier.

2. The first or second Vice-President, as the case may be, may act in place of the President in the event that the President is unavailable or disqualified. An alternate Vice-President may act in place of either Vice-President as required.

3. The President and the Vice-Presidents shall constitute the Presidency which shall be responsible for:

- (a) the due administration of the Court;
- (b) the other functions conferred on it by this Statute.

4. Unless otherwise indicated, pre-trial and other procedural functions conferred under this Statute on the Court may be exercised by the Presidency in any case where a chamber of the Court is not seized of the matter.

5. The Presidency may, in accordance with the Rules, delegate to one or more judges the exercise of a power vested in it under article 26, paragraphs 3, 27, paragraphs 5, 28, 29 or 30, paragraph 3, in relation to a case, during the period before a trial chamber is established for that case.

#### *Article 9. Chambers*

1. As soon as possible after each election of judges to the Court, the Presidency shall in accordance with the Rules constitute an Appeals Chamber consisting of the President and six other judges, of whom at least three shall be judges elected from among the persons nominated as having the qualification referred to in article 6, paragraph 1 (b). The President shall preside over the Appeals Chamber.

2. The Appeals Chamber shall be constituted for a term of three years. Members of the Appeals Chamber shall, however, continue to sit on the Chamber in order to complete any case the hearing of which has commenced.

3. Judges may be renewed as members of the Appeals Chamber for a second or subsequent term.

4. Judges not members of the Appeals Chamber shall be available to serve on Trial Chambers and other chambers required by this Statute, and to act as substitute members of the Appeals Chamber in the event that a member of that Chamber is unavailable or disqualified.

5. The Presidency shall nominate in accordance with the Rules five such judges to be members of the Trial Chamber for a given case. A Trial Chamber shall include at least three judges elected from among the persons nominated as having the qualification referred to in article 6, paragraph 1 (a).

6. The Rules may provide for alternate judges to be nominated to attend a trial and to act as members of the Trial Chamber in the event that a judge dies or becomes unavailable during the course of the trial.

7. No judge who is a national of a complainant State or of a State of which the accused is a national shall be a member of a chamber dealing with the case.

*Article 10. Independence of the judges*

1. In performing their functions, the judges shall be independent.
2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence. In particular, they shall not while holding the office of judge be a member of the legislative or executive branches of the Government of a State, or of a body responsible for the investigation or prosecution of crimes.
3. Any question as to the application of paragraph 2 shall be decided by the Presidency.
4. On the recommendation of the Presidency, the States Parties may by a two-thirds majority decide that the workload of the Court requires that the judges should serve on a full-time basis. In that case:
  - (a) existing judges who elect to serve on a full-time basis shall not hold any other office or employment;
  - (b) judges subsequently elected shall not hold any other office or employment.

*Article 11. Excusing and disqualification of judges*

1. The Presidency at the request of a judge may excuse that judge from the exercise of a function under this Statute.
2. Judges shall not participate in any case in which they have previously been involved in any capacity or in which their impartiality might reasonably be doubted on any ground, including an actual, apparent or potential conflict of interest.
3. The Prosecutor or the accused may request the disqualification of a judge under paragraph 2.
4. Any question as to the disqualification of a judge shall be decided by an absolute majority of the members of the Chamber concerned. The challenged judge shall not take part in the decision.

*Article 12. The Procuracy*

1. The Procuracy is an independent organ of the Court responsible for the investigation of complaints brought in accordance with this Statute and for the conduct of prosecutions. A member of the Procuracy shall not seek or act on instructions from any external source.
2. The Procuracy shall be headed by the Prosecutor, assisted by one or more Deputy Prosecutors, who may act in place of the Prosecutor in the event that the Prosecutor is unavailable. The Prosecutor and the

Deputy Prosecutors shall be of different nationalities. The Prosecutor may appoint such other qualified staff as may be required.

3. The Prosecutor and Deputy Prosecutors shall be persons of high moral character and have high competence and experience in the prosecution of criminal cases. They shall be elected by secret ballot by an absolute majority of the States Parties, from among candidates nominated by States Parties. Unless a shorter term is otherwise decided on at the time of their election, they shall hold office for a term of five years and are eligible for re-election.

4. The States Parties may elect the Prosecutor and Deputy Prosecutors on the basis that they are willing to serve as required.

5. The Prosecutor and Deputy Prosecutors shall not act in relation to a complaint involving a person of their own nationality.

6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor at their request from acting in a particular case, and shall decide any question raised in a particular case as to the disqualification of the Prosecutor or a Deputy Prosecutor.

7. The staff of the Procuracy shall be subject to Staff Regulations drawn up by the Prosecutor.

#### *Article 13. The Registry*

1. On the proposal of the Presidency, the judges by an absolute majority by secret ballot shall elect a Registrar, who shall be the principal administrative officer of the Court. They may in the same manner elect a Deputy Registrar.

2. The Registrar shall hold office for a term of five years, is eligible for re-election and shall be available on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided on, and may be elected on the basis that the Deputy Registrar is willing to serve as required.

3. The Presidency may appoint or authorize the Registrar to appoint such other staff of the Registry as may be necessary.

4. The staff of the Registry shall be subject to Staff Regulations drawn up by the Registrar.

#### *Article 14. Solemn undertaking*

Before first exercising their functions under this Statute, judges and other officers of the Court shall make a public and solemn undertaking to do so impartially and conscientiously.

*Article 15. Loss of office*

1. A judge, the Prosecutor or other officer of the Court who is found to have committed misconduct or a serious breach of this Statute, or to be unable to exercise the functions required by this Statute because of long-term illness or disability, shall cease to hold office.

2. A decision as to the loss of office under paragraph 1 shall be made by secret ballot:

(a) in the case of the Prosecutor or a Deputy Prosecutor, by an absolute majority of the States Parties;

(b) in any other case, by a two-thirds majority of the judges.

3. The judge, the Prosecutor or any other officer whose conduct or fitness for office is impugned shall have full opportunity to present evidence and to make submissions but shall not otherwise participate in the discussion of the question.

*Article 16. Privileges and immunities*

1. The judges, the Prosecutor, the Deputy Prosecutors and the staff of the Procuracy, the Registrar and the Deputy Registrar shall enjoy the privileges, immunities and facilities of a diplomatic agent within the meaning of the Vienna Convention on Diplomatic Relations of 16 April 1961.

2. The staff of the Registry shall enjoy the privileges, immunities and facilities necessary to the performance of their functions.

3. Counsel, experts and witnesses before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

4. The judges may by an absolute majority decide to revoke a privilege or waive an immunity conferred by this article, other than an immunity of a judge, the Prosecutor or Registrar as such. In the case of other officers and staff of the Procuracy or Registry, they may do so only on the recommendation of the Prosecutor or Registrar, as the case may be.

*Article 17. Allowances and expenses*

1. The President shall receive an annual allowance.

2. The Vice-Presidents shall receive a special allowance for each day they exercise the functions of the President.

3. Subject to paragraph 4, the judges shall receive a daily allowance during the period in which they exercise their functions. They may

continue to receive a salary payable in respect of another position occupied by them consistently with article 10.

4. If it is decided under article 10, paragraph 4, that judges shall thereafter serve on a full-time basis, existing judges who elect to serve on a full-time basis, and all judges subsequently elected, shall be paid a salary.

#### *Article 18. Working languages*

The working languages of the Court shall be English and French.

#### *Article 19. Rules of the Court*

1. Subject to paragraphs 2 and 3, the judges may by an absolute majority make rules for the functioning of the Court in accordance with this Statute, including rules regulating:

- (a) the conduct of investigations;
- (b) the procedure to be followed and the rules of evidence to be applied;
- (c) any other matter which is necessary for the implementation of this Statute.

2. The initial Rules of the Court shall be drafted by the judges within six months of the first elections for the Court, and submitted to a conference of States Parties for approval. The judges may decide that a rule subsequently made under paragraph 1 should also be submitted to a conference of States Parties for approval.

3. In any case to which paragraph 2 does not apply, rules made under paragraph 1 shall be transmitted to States Parties and may be confirmed by the Presidency unless, within six months after transmission, a majority of States Parties have communicated in writing their objections.

4. A rule may provide for its provisional application in the period prior to its approval or confirmation. A rule not approved or confirmed shall lapse.

### Part Three. Jurisdiction of the Court

#### *Article 20. Crimes within the jurisdiction of the Court*

The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) the crime of genocide;
- (b) the crime of aggression;

- (c) serious violations of the laws and customs applicable in armed conflict;
- (d) crimes against humanity;
- (e) crimes, established under or pursuant to the treaty provisions listed in the Annex, which, having regard to the conduct alleged, constitute exceptionally serious crimes of international concern.

*Article 21. Preconditions to the exercise of jurisdiction*

1. The Court may exercise its jurisdiction over a person with respect to a crime referred to in article 20 if:

(a) in a case of genocide, a complaint is brought under article 25, paragraph 1;

(b) in any other case, a complaint is brought under article 25, paragraph 2, and the jurisdiction of the Court with respect to the crime is accepted under article 22:

- (i) by the State which has custody of the suspect with respect to the crime ("the custodial State");
- (ii) by the State on the territory of which the act or omission in question occurred.

2. If, with respect to a crime to which paragraph 1 (b) applies, the custodial State has received, under an international agreement, a request from another State to surrender a suspect for the purposes of prosecution, then, unless the request is rejected, the acceptance by the requesting State of the Court's jurisdiction with respect to the crime is also required.

*Article 22. Acceptance of the jurisdiction of the Court for the purposes of article 21*

1. A State Party to this Statute may:

(a) at the time it expresses its consent to be bound by the Statute, by declaration lodged with the depositary; or

(b) at a later time, by declaration lodged with the Registrar;

accept the jurisdiction of the Court with respect to such of the crimes referred to in article 20 as it specifies in the declaration.

2. A declaration may be of general application, or may be limited to particular conduct or to conduct committed during a particular period of time.

3. A declaration may be made for a specified period, in which case it may not be withdrawn before the end of that period, or for an unspecified period, in which case it may be withdrawn only upon giving

six months' notice of withdrawal to the Registrar. Withdrawal does not affect proceedings already commenced under this Statute.

4. If under article 21 the acceptance of a State which is not a party to this Statute is required, that State may, by declaration lodged with the Registrar, consent to the Court exercising jurisdiction with respect to the crime.

#### *Article 23. Action by the Security Council*

1. Notwithstanding article 21, the Court has jurisdiction in accordance with this Statute with respect to crimes referred to in article 20 as a consequence of the referral of a matter to the Court by the Security Council acting under Chapter VII of the Charter of the United Nations.

2. A complaint of or directly related to an act of aggression may not be brought under this Statute unless the Security Council has first determined that a State has committed the act of aggression which is the subject of the complaint.

3. No prosecution may be commenced under this Statute arising from a situation which is being dealt with by the Security Council as a threat to or breach of the peace or an act of aggression under Chapter VII of the Charter, unless the Security Council otherwise decides.

#### *Article 24. Duty of the Court as to jurisdiction*

The Court shall satisfy itself that it has jurisdiction in any case brought before it.

### Part Four. Investigation and prosecution

#### *Article 25. Complaint*

1. A State Party which is also a Contracting Party to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 may lodge a complaint with the Prosecutor alleging that a crime of genocide appears to have been committed.

2. A State Party which accepts the jurisdiction of the Court under article 22 with respect to a crime may lodge a complaint with the Prosecutor alleging that such a crime appears to have been committed.

3. As far as possible a complaint shall specify the circumstances of the alleged crime and the identity and whereabouts of any suspect, and be accompanied by such supporting documentation as is available to the complainant State.

4. In a case to which article 23, paragraph 1, applies, a complaint is not required for the initiation of an investigation.

*Article 26. Investigation of alleged crimes*

1. On receiving a complaint or upon notification of a decision of the Security Council referred to in article 23, paragraph 1, the Prosecutor shall initiate an investigation unless the Prosecutor concludes that there is no possible basis for a prosecution under this Statute and decides not to initiate an investigation, in which case the Prosecutor shall so inform the Presidency.

2. The Prosecutor may:

(a) request the presence of and question suspects, victims and witnesses;

(b) collect documentary and other evidence;

(c) conduct on-site investigations;

(d) take necessary measures to ensure the confidentiality of information or the protection of any person;

(e) as appropriate, seek the cooperation of any State or of the United Nations.

3. The Presidency may, at the request of the Prosecutor, issue such subpoenas and warrants as may be required for the purposes of an investigation, including a warrant under article 28, paragraph 1, for the provisional arrest of a suspect.

4. If, upon investigation and having regard, *inter alia*, to the matters referred to in article 35, the Prosecutor concludes that there is no sufficient basis for a prosecution under this Statute and decides not to file an indictment, the Prosecutor shall so inform the Presidency giving details of the nature and basis of the complaint and of the reasons for not filing an indictment.

5. At the request of a complainant State or, in a case to which article 23, paragraph 1, applies, at the request of the Security Council, the Presidency shall review a decision of the Prosecutor not to initiate an investigation or not to file an indictment, and may request the Prosecutor to reconsider the decision.

6. A person suspected of a crime under this Statute shall:

(a) prior to being questioned, be informed that the person is a suspect and of the rights:

(i) to remain silent, without such silence being a consideration in the determination of guilt or innocence;

- (ii) to have the assistance of counsel of the suspect's choice or, if the suspect lacks the means to retain counsel, to have legal assistance assigned by the Court;
- (b) not be compelled to testify or to confess guilt;
- (c) if questioned in a language other than a language the suspect understands and speaks, be provided with competent interpretation services and with a translation of any document on which the suspect is to be questioned.

*Article 27. Commencement of prosecution*

1. If upon investigation the Prosecutor concludes that there is a *prima facie* case, the Prosecutor shall file with the Registrar an indictment containing a concise statement of the allegations of fact and of the crime or crimes with which the suspect is charged.

2. The Presidency shall examine the indictment and any supporting material and determine:

- (a) whether a *prima facie* case exists with respect to a crime within the jurisdiction of the Court; and
- (b) whether, having regard, *inter alia*, to the matters referred to in article 35, the case should on the information available be heard by the Court.

If so, it shall confirm the indictment and establish a trial chamber in accordance with article 9.

3. If, after any adjournment that may be necessary to allow additional material to be produced, the Presidency decides not to confirm the indictment, it shall so inform the complainant State or, in a case to which article 23, paragraph 1, applies, the Security Council.

4. The Presidency may at the request of the Prosecutor amend the indictment, in which case it shall make any necessary orders to ensure that the accused is notified of the amendment and has adequate time to prepare a defence.

5. The Presidency may make any further orders required for the conduct of the trial, including an order:

- (a) determining the language or languages to be used during the trial;
- (b) requiring the disclosure to the defence, within a sufficient time before the trial to enable the preparation of the defence, of documentary or other evidence available to the Prosecutor, whether or not the Prosecutor intends to rely on that evidence;

- (c) providing for the exchange of information between the Prosecutor and the defence, so that both parties are sufficiently aware of the issues to be decided at the trial;
- (d) providing for the protection of the accused, victims and witnesses and of confidential information.

#### *Article 28. Arrest*

1. At any time after an investigation has been initiated, the Presidency may at the request of the Prosecutor issue a warrant for the provisional arrest of a suspect if:

- (a) there is probable cause to believe that the suspect may have committed a crime within the jurisdiction of the Court; and

- (b) the suspect may not be available to stand trial unless provisionally arrested.

2. A suspect who has been provisionally arrested is entitled to release from arrest if the indictment has not been confirmed within 90 days of the arrest, or such longer time as the Presidency may allow.

3. As soon as practicable after the confirmation of the indictment, the Prosecutor shall seek from the Presidency a warrant for the arrest and transfer of the accused. The Presidency shall issue such a warrant unless it is satisfied that:

- (a) the accused will voluntarily appear for trial; or

- (b) there are special circumstances making it unnecessary for the time being to issue the warrant.

4. A person arrested shall be informed at the time of arrest of the reasons for the arrest and shall be promptly informed of any charges.

#### *Article 29. Pre-trial detention or release*

1. A person arrested shall be brought promptly before a judicial officer of the State where the arrest occurred. The judicial officer shall determine, in accordance with the procedures applicable in that State, that the warrant has been duly served and that the rights of the accused have been respected.

2. A person arrested may apply to the Presidency for release pending trial. The Presidency may release the person unconditionally or on bail if it is satisfied that the accused will appear at the trial.

3. A person arrested may apply to the Presidency for a determination of the lawfulness under this Statute of the arrest or detention. If the Presidency decides that the arrest or detention was unlawful, it shall order the release of the accused, and may award compensation.

4. A person arrested shall be held, pending trial or release on bail, in an appropriate place of detention in the arresting State, in the State in which the trial is to be held or if necessary, in the host State.

*Article 30. Notification of the indictment*

1. The Prosecutor shall ensure that a person who has been arrested is personally served, as soon as possible after being taken into custody, with certified copies of the following documents, in a language understood by that person:

- (a) in the case of a suspect provisionally arrested, a statement of the grounds for the arrest;
- (b) in any other case, the confirmed indictment;
- (c) a statement of the accused's rights under this Statute.

2. In any case to which paragraph 1 (a) applies, the indictment shall be served on the accused as soon as possible after it has been confirmed.

3. If, 60 days after the indictment has been confirmed, the accused is not in custody pursuant to a warrant issued under article 28, paragraph 3, or for some reason the requirements of paragraph 1 cannot be complied with, the Presidency may on the application of the Prosecutor prescribe some other manner of bringing the indictment to the attention of the accused.

*Article 31. Persons made available to assist in a prosecution*

1. The Prosecutor may request a State Party to make persons available to assist in a prosecution in accordance with paragraph 2.

2. Such persons should be available for the duration of the prosecution, unless otherwise agreed. They shall serve at the direction of the Prosecutor, and shall not seek or receive instructions from any Government or source other than the Prosecutor in relation to their exercise of functions under this article.

3. The terms and conditions on which persons may be made available under this article shall be approved by the Presidency on the recommendation of the Prosecutor.

**Part Five. The trial**

*Article 32. Place of trial*

Unless otherwise decided by the Presidency, the place of the trial will be the seat of the Court.

*Article 33. Applicable law*

The Court shall apply:

- (a) this Statute;
- (b) applicable treaties and the principles and rules of general international law;
- (c) to the extent applicable, any rule of national law.

*Article 34. Challenges to jurisdiction*

Challenges to the jurisdiction of the Court may be made, in accordance with the Rules:

- (a) prior to or at the commencement of the hearing, by an accused or any interested State; and
- (b) at any later stage of the trial, by an accused.

*Article 35. Issues of admissibility*

The Court may, on application by the accused or at the request of an interested State at any time prior to the commencement of the trial, or of its own motion, decide, having regard to the purposes of this Statute set out in the preamble, that a case before it is inadmissible on the ground that the crime in question:

- (a) has been duly investigated by a State with jurisdiction over it, and the decision of that State not to proceed to a prosecution is apparently well-founded;
- (b) is under investigation by a State which has or may have jurisdiction over it, and there is no reason for the Court to take any further action for the time being with respect to the crime; or
- (c) is not of such gravity to justify further action by the Court.

*Article 36. Procedure under articles 34 and 35*

1. In proceedings under articles 34 and 35, the accused and the complainant State have the right to be heard.
2. Proceedings under articles 34 and 35 shall be decided by the Trial Chamber, unless it considers, having regard to the importance of the issues involved, that the matter should be referred to the Appeals Chamber.

*Article 37. Trial in the presence of the accused*

1. As a general rule, the accused should be present during the trial.

2. The Trial Chamber may order that the trial proceed in the absence of the accused if:

(a) the accused is in custody, or has been released pending trial, and for reasons of security or the ill-health of the accused it is undesirable for the accused to be present;

(b) the accused is continuing to disrupt the trial; or

(c) the accused has escaped from lawful custody under this Statute or has broken bail.

3. The Chamber shall, if it makes an order under paragraph 2, ensure that the rights of the accused under this Statute are respected, and in particular:

(a) that all reasonable steps have been taken to inform the accused of the charge; and

(b) that the accused is legally represented, if necessary by a lawyer appointed by the Court.

4. In cases where a trial cannot be held because of the deliberate absence of an accused, the Court may establish, in accordance with the Rules, an Indictment Chamber for the purpose of:

(a) recording the evidence;

(b) considering whether the evidence establishes a prima facie case of a crime within the jurisdiction of the Court; and

(c) issuing and publishing a warrant of arrest in respect of an accused against whom a prima facie case is established.

5. If the accused is subsequently tried under this Statute:

(a) the record of evidence before the Indictment Chamber shall be admissible;

(b) any judge who was a member of the Indictment Chamber may not be a member of the Trial Chamber.

#### *Article 38. Functions and powers of the Trial Chamber*

1. At the commencement of the trial, the Trial Chamber shall:

(a) have the indictment read;

(b) ensure that articles 27, paragraph 5 (b), and 30 have been complied with sufficiently in advance of the trial to enable adequate preparation of the defence;

(c) satisfy itself that the other rights of the accused under this Statute have been respected; and

(d) allow the accused to enter a plea of guilty or not guilty.

2. The Chamber shall ensure that a trial is fair and expeditious and is conducted in accordance with this Statute and the Rules, with full

respect for the rights of the accused and due regard for the protection of victims and witnesses.

3. The Chamber may, subject to the Rules, hear charges against more than one accused arising out of the same factual situation.

4. The trial shall be held in public, unless the Chamber determines that certain proceedings be in closed session in accordance with article 43, or for the purpose of protecting confidential or sensitive information which is to be given in evidence.

5. The Chamber shall, subject to this Statute and the Rules have, *inter alia*, the power on the application of a party or of its own motion, to:

- (a) issue a warrant for the arrest and transfer of an accused who is not already in the custody of the Court;
- (b) require the attendance and testimony of witnesses;
- (c) require the production of documentary and other evidentiary materials;
- (d) rule on the admissibility or relevance of evidence;
- (e) protect confidential information;
- (f) maintain order in the course of a hearing.

6. The Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is maintained and preserved by the Registrar.

#### *Article 39. Principle of legality (nullum crimen sine lege)*

An accused shall not be held guilty:

(a) in the case of a prosecution with respect to a crime referred to in article 20, subparagraphs (a) to (d), unless the act or omission in question constituted a crime under international law;

(b) in the case of a prosecution with respect to a crime referred to in article 20, subparagraph (e), unless the treaty in question was applicable to the conduct of the accused;

at the time the act or omission occurred.

#### *Article 40. Presumption of innocence*

An accused shall be presumed innocent until proved guilty in accordance with the law. The onus is on the Prosecutor to establish the guilt of the accused beyond reasonable doubt.

*Article 41. Rights of the accused*

1. In the determination of any charge under this Statute, the accused is entitled to a fair and public hearing, subject to article 43, and to the following minimum guarantees:

(a) to be informed promptly and in detail, in a language which the accused understands, of the nature and cause of the charge;

(b) to have adequate time and facilities for the preparation of the defence, and to communicate with counsel of the accused's choosing;

(c) to be tried without undue delay;

(d) subject to article 37, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court, without payment if the accused lacks sufficient means to pay for such assistance;

(e) to examine, or have examined, the prosecution witnesses and to obtain the attendance and examination of witnesses for the defence under the same conditions as witnesses for the prosecution;

(f) if any of the proceedings of or documents presented to the Court are not in a language the accused understands and speaks, to have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness;

(g) not to be compelled to testify or to confess guilt.

2. Exculpatory evidence that becomes available to the Procuracy prior to the conclusion of the trial shall be made available to the defence. In case of doubt as to the application of this paragraph or as to the admissibility of the evidence, the Trial Chamber shall decide.

*Article 42. Non bis in idem*

1. No person shall be tried before any other court for acts constituting a crime of the kind referred to in article 20 for which that person has already been tried by the Court.

2. A person who has been tried by another court for acts constituting a crime of the kind referred to in article 20 may be tried under this Statute only if:

(a) the acts in question were characterized by that court as an ordinary crime and not as a crime which is within the jurisdiction of the Court; or

(b) the proceedings in the other court were not impartial or independent or were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted under this Statute, the Court shall take into account the extent to which a penalty imposed by another court on the same person for the same act has already been served.

#### *Article 43. Protection of the accused, victims and witnesses*

The Court shall take necessary measures available to it to protect the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means.

#### *Article 44. Evidence*

1. Before testifying, each witness shall, in accordance with the Rules, give an undertaking as to the truthfulness of the evidence to be given by that witness.

2. States Parties shall extend their laws of perjury to cover evidence given under this Statute by their nationals, and shall cooperate with the Court in investigating and where appropriate prosecuting any case of suspected perjury.

3. The Court may require to be informed of the nature of any evidence before it is offered so that it may rule on its relevance or admissibility.

4. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.

5. Evidence obtained by means of a serious violation of this Statute or of other rules of international law shall not be admissible.

#### *Article 45. Quorum and judgement*

1. At least four members of the Trial Chamber must be present at each stage of the trial.

2. The decisions of the Trial Chamber shall be taken by a majority of the judges. At least three judges must concur in a decision as to conviction or acquittal and as to the sentence to be imposed.

3. If after sufficient time for deliberation a Chamber which has been reduced to four judges is unable to agree on a decision, it may order a new trial.

4. The deliberations of the Court shall be and remain secret.

5. The judgement shall be in writing and shall contain a full and reasoned statement of the findings and conclusions. It shall be the sole judgement issued, and shall be delivered in open court.

#### *Article 46. Sentencing*

1. In the event of a conviction, the Trial Chamber shall hold a further hearing to hear any evidence relevant to sentence, to allow the Prosecutor and the defence to make submissions and to consider the appropriate sentence to be imposed.

2. In imposing sentence, the Trial Chamber should take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.

#### *Article 47. Applicable penalties*

1. The Court may impose on a person convicted of a crime under this Statute one or more of the following penalties:

(a) a term of life imprisonment, or of imprisonment for a specified number of years;

(b) a fine.

2. In determining the length of a term of imprisonment or the amount of a fine to be imposed, the Court may have regard to the penalties provided for by the law of:

(a) the State of which the convicted person is a national;

(b) the State where the crime was committed;

(c) the State which had custody of and jurisdiction over the accused.

3. Fines paid may be transferred, by order of the Court, to one or more of the following:

(a) the Registrar, to defray the costs of the trial;

(b) a State of which the nationals were the victims of the crime;

(c) a trust fund established by the Secretary-General of the United Nations for the benefit of victims of crime.

### Part Six. Appeal and review

#### *Article 48. Appeal against judgement or sentence*

1. The Prosecutor and the convicted person may, in accordance with the Rules, appeal against a decision under articles 45 or 47 on grounds of procedural error, error of fact or of law, or disproportion between the crime and the sentence.

2. Unless the Trial Chamber otherwise orders, a convicted person shall remain in custody pending an appeal.

*Article 49. Proceedings on appeal*

1. The Appeals Chamber has all the powers of the Trial Chamber.

2. If the Appeals Chamber finds that the proceedings appealed from were unfair or that the decision is vitiated by error of fact or law, it may:

(a) if the appeal is brought by the convicted person, reverse or amend the decision, or, if necessary, order a new trial;

(b) if the appeal is brought by the Prosecutor against an acquittal, order a new trial.

3. If in an appeal against sentence the Chamber finds that the sentence is manifestly disproportionate to the crime, it may vary the sentence in accordance with article 47.

4. The decision of the Chamber shall be taken by a majority of the judges, and shall be delivered in open court. Six judges constitute a quorum.

5. Subject to article 50, the decision of the Chamber shall be final.

*Article 50. Revision*

1. The convicted person or the Prosecutor may, in accordance with the Rules, apply to the Presidency for revision of a conviction on the ground that evidence has been discovered which was not available to the applicant at the time the conviction was pronounced or affirmed and which could have been a decisive factor in the conviction.

2. The Presidency shall request the Prosecutor or the convicted person, as the case may be, to present written observations on whether the application should be accepted.

3. If the Presidency is of the view that the new evidence could lead to the revision of the conviction, it may:

(a) reconvene the Trial Chamber;

(b) constitute a new Trial Chamber; or

(c) refer the matter to the Appeals Chamber;

with a view to the Chamber determining, after hearing the parties, whether the new evidence should lead to a revision of the conviction.

Part Seven. International cooperation and judicial assistance

*Article 51. Cooperation and judicial assistance*

1. States Parties shall cooperate with the Court in connection with criminal investigations and proceedings under this Statute.
2. The Registrar may transmit to any State a request for cooperation and judicial assistance with respect to a crime, including, but not limited to:
  - (a) the identification and location of persons;
  - (b) the taking of testimony and the production of evidence;
  - (c) the service of documents;
  - (d) the arrest or detention of persons;
  - (e) any other request which may facilitate the administration of justice, including provisional measures as required.
3. Upon receipt of a request under paragraph 2:
  - (a) in a case covered by article 21, paragraph 1 (a), all States Parties;
  - (b) in any other case, States Parties which have accepted the jurisdiction of the Court with respect to the crime in question;shall respond without undue delay to the request.

*Article 52. Provisional measures*

1. In case of need, the Court may request a State to take necessary provisional measures, including the following:
  - (a) to provisionally arrest a suspect;
  - (b) to seize documents or other evidence; or
  - (c) to prevent injury to or the intimidation of a witness or the destruction of evidence.
2. The Court shall follow up a request under paragraph 1 by providing, as soon as possible and in any case within 28 days, a formal request for assistance complying with article 57.

*Article 53. Transfer of an accused to the Court*

1. The Registrar shall transmit to any State on the territory of which the accused may be found a warrant for the arrest and transfer of an accused issued under article 28, and shall request the cooperation of that State in the arrest and transfer of the accused.
2. Upon receipt of a request under paragraph 1:
  - (a) all States Parties:

- (i) in a case covered by article 21, paragraph 1 (a); or
- (ii) which have accepted the jurisdiction of the Court with respect to the crime in question;

shall, subject to paragraphs 5 and 6, take immediate steps to arrest and transfer the accused to the Court;

(b) in the case of a crime to which article 20, subparagraph (e), applies, a State Party which is a party to the treaty in question but which has not accepted the Court's jurisdiction with respect to that crime shall, if it decides not to transfer the accused to the Court, forthwith take all necessary steps to extradite the accused to a requesting State or refer the case to its competent authorities for the purpose of prosecution;

(c) in any other case, a State Party shall consider whether it can, in accordance with its legal procedures, take steps to arrest and transfer the accused to the Court, or whether it should take steps to extradite the accused to a requesting State or refer the case to its competent authorities for the purpose of prosecution.

3. The transfer of an accused to the Court constitutes, as between States Parties which accept the jurisdiction of the Court with respect to the crime, sufficient compliance with a provision of any treaty requiring that a suspect be extradited or the case referred to the competent authorities of the requested State for the purpose of prosecution.

4. A State Party which accepts the jurisdiction of the Court with respect to the crime shall, as far as possible, give priority to a request under paragraph 1 over requests for extradition from other States.

5. A State Party may delay complying with paragraph 2 if the accused is in its custody or control and is being proceeded against for a serious crime, or serving a sentence imposed by a court for a crime.

It shall within 45 days of receiving the request inform the Registrar of the reasons for the delay. In such cases, the requested State:

(a) may agree to the temporary transfer of the accused for the purpose of standing trial under this Statute; or

(b) shall comply with paragraph 2 after the prosecution has been completed or abandoned or the sentence has been served, as the case may be.

6. A State Party may, within 45 days of receiving a request under paragraph 1, file a written application with the Registrar requesting the Court to set aside the request on specified grounds. Pending a decision of the Court on the application, the State concerned may delay complying with paragraph 2 but shall take any provisional measures necessary to ensure that the accused remains in its custody or control.

*Article 54. Obligation to extradite or prosecute*

In a case of a crime referred to in article 20, subparagraph (e), a custodial State Party to this Statute which is a party to the treaty in question but which has not accepted the Court's jurisdiction with respect to the crime for the purposes of article 21, paragraph 1 (b) (i), shall either take all necessary steps to extradite the suspect to a requesting State for the purpose of prosecution or refer the case to its competent authorities for that purpose.

*Article 55. Rule of speciality*

1. A person transferred to the Court under article 53 shall not be subject to prosecution or punishment for any crime other than that for which the person was transferred.
2. Evidence provided under this Part shall not, if the State when providing it so requests, be used as evidence for any purpose other than that for which it was provided, unless this is necessary to preserve the right of an accused under article 41, paragraph 2.
3. The Court may request the State concerned to waive the requirements of paragraphs 1 or 2, for the reasons and purposes specified in the request.

*Article 56. Cooperation with States not parties to this Statute*

States not parties to this Statute may assist in relation to the matters referred to in this Part on the basis of comity, a unilateral declaration, an *ad hoc* arrangement or other agreement with the Court.

*Article 57. Communications and documentation*

1. Requests under this Part shall be in writing, or be forthwith reduced to writing, and shall be between the competent national authority and the Registrar. States Parties shall inform the Registrar of the name and address of their national authority for this purpose.
2. When appropriate, communications may also be made through the International Criminal Police Organization.
3. A request under this Part shall include the following, as applicable:
  - (a) a brief statement of the purpose of the request and of the assistance sought, including the legal basis and grounds for the request;
  - (b) information concerning the person who is the subject of the request on the evidence sought, in sufficient detail to enable identification;

(c) a brief description of the essential facts underlying the request; and

(d) information concerning the complaint or charge to which the request relates and of the basis for the Court's jurisdiction.

4. A requested State which considers the information provided insufficient to enable the request to be complied with may seek further particulars.

## Part Eight. Enforcement

### *Article 58. Recognition of judgements*

States Parties undertake to recognize the judgements of the Court.

### *Article 59. Enforcement of sentences*

1. A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept convicted persons.

2. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State.

3. A sentence of imprisonment shall be subject to the supervision of the Court in accordance with the Rules.

### *Article 60. Pardon, parole and commutation of sentences*

1. If, under a generally applicable law of the State of imprisonment, a person in the same circumstances who had been convicted for the same conduct by a court of that State would be eligible for pardon, parole or commutation of sentence, the State shall so notify the Court.

2. If a notification has been given under paragraph 1, the prisoner may apply to the Court in accordance with the Rules, seeking an order for pardon, parole or commutation of the sentence.

3. If the Presidency decides that an application under paragraph 2 is apparently well-founded, it shall convene a Chamber of five judges to consider and decide whether in the interests of justice the person convicted should be pardoned or paroled or the sentence commuted, and on what basis.

4. When imposing a sentence of imprisonment, a Chamber may stipulate that the sentence is to be served in accordance with specified laws as to pardon, parole or commutation of sentence of the State of imprisonment. The consent of the Court is not required to subsequent action by that State in conformity with those laws, but the Court shall

be given at least 45 days' notice of any decision which might materially affect the terms or extent of the imprisonment.

5. Except as provided in paragraphs 3 and 4, a person serving a sentence imposed by the Court is not to be released before the expiry of the sentence.

(b) ANNEX. CRIMES PURSUANT TO TREATIES  
(SEE ART. 20, SUBPARA. (e))

1. Grave breaches of:

(a) the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, as defined by article 50 of that Convention;

(b) the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, as defined by article 51 of that Convention;

(c) the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, as defined by article 130 of that Convention;

(d) the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, as defined by article 147 of that Convention;

(e) protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) of 8 June 1977, as defined by article 85 of that Protocol.

2. The unlawful seizure of aircraft as defined by article 1 of the Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970.

3. The crimes defined by article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971.

4. Apartheid and related crimes as defined by article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973.

5. The crimes defined by article 2 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973.

6. Hostage-taking and related crimes as defined by article 1 of the International Convention against the Taking of Hostages of 17 December 1979.

7. The crime of torture made punishable pursuant to article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

8. The crimes defined by article 3 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and by article 2 of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, both of 10 March 1988.

9. Crimes involving illicit traffic in narcotic drugs and psychotropic substances as envisaged by article 3, paragraph 1, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 which, having regard to article 2 of the Convention, are crimes with an international dimension.

(c) APPENDIX I. POSSIBLE CLAUSES OF A TREATY TO ACCOMPANY  
THE DRAFT STATUTE

1. The Commission envisages that the statute will be attached to a treaty between States Parties. That treaty would provide for the establishment of the court, and for the supervision of its administration by the States Parties. It would also deal with such matters as financing, entry into force, etc., as is required for any new instrument creating an entity such as the court.

2. The standard practice of the Commission is not to draft final clauses for its draft articles, and for that reason it has not sought to draft a set of clauses for a covering treaty which would contain clauses of that kind. However, in discussions in the Sixth Committee of the General Assembly, a number of the matters which it will be necessary to resolve in concluding such a treaty were discussed, and the Commission felt that it may be useful to outline some possible options for dealing with them.

3. Issues that will need to be dealt with include the following:

(a) *Entry into force:* The statute of the court is intended to reflect and represent the interests of the international community as a whole in relation to the prosecution of certain most serious crimes of international concern. In consequence, the statute and its covering treaty should require a substantial number of States Parties before it enters into force.

(b) *Administration:* The administration of the court as an entity is entrusted to the Presidency (see art. 8). However States Parties will need to meet from time to time to deal with such matters as the finances and administration of the court, and to consider periodic reports from the

court, etc. The means by which States Parties will act together will need to be established.

(c) *Financing:* Detailed consideration must be given to financial issues at an early stage of any discussion of the proposed court. There are essentially two possibilities: direct financing by the States Parties or total or partial financing by the United Nations. United Nations financing is not necessarily excluded in the case of a separate entity in relationship with the United Nations (such as the Human Rights Committee). The statute is drafted in such a way as to minimize the costs of establishment of the court itself. On the other hand, a number of members stressed that investigations and prosecutions under the statute could be expensive. Arrangements will also have to be made to cover the costs of imprisonment of persons convicted under the statute.

(d) *Amendment and review of the statute:* The covering treaty must of course provide for amendment of the statute. It should, in the Commission's view, provide for a review of the statute, at the request of a specified number of States Parties after, say, five years. One issue that will arise in considering amendment or review will be the question whether the list of crimes contained in the annex should be revised so as to incorporate new conventions establishing crimes. This may include such instruments in the course of preparation as the draft Code of Crimes against the Peace and Security of Mankind, and the proposed convention on the protection of United Nations peacekeepers.

(e) *Reservations:* Whether or not the statute would be considered to be "a constituent instrument of an international organization" within the meaning of article 20, paragraph 3, of the Vienna Convention of the Law of Treaties, it is certainly closely analogous to a constituent instrument, and the considerations which led the drafters to require the consent of the "competent organ of that organization" under article 20, paragraph 3, apply in rather similar fashion to it. The draft statute has been constructed as an overall scheme, incorporating important balances and qualifications in relation to the working of the court: it is intended to operate as a whole. These considerations tend to support the view that reservations to the statute and its accompanying treaty should either not be permitted, or should be limited in scope. This is of course a matter for States Parties to consider in the context of negotiations for the conclusion of the statute and its accompanying treaty.

(f) *Settlement of disputes:* The court will of course have to determine its own jurisdiction (see arts. 24 and 34), and will accordingly have to deal with any issues of interpretation and application of the statute which arise in the exercise of that jurisdiction. Consideration will need to be given to ways in which other disputes, with regard to the interpre-

tation and implementation of the treaty embodying the statute, arising between States Parties, should be resolved.

(d) APPENDIX II. RELEVANT TREATY PROVISIONS  
MENTIONED IN THE ANNEX  
(SEE ART. 20, SUBPARA. (E))

1. Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field of 12 August 1949

*Article 50*

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

2. Geneva Convention for the amelioration of the conditions of wounded, sick and shipwrecked members of armed forces at sea of 12 August 1949

*Article 51*

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

3. Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949

*Article 130*

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

4. Geneva Convention Relative to the Protection of Civilian Persons  
in Time of War, 12 August 1949

*Article 147*

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

5. Protocol Additional to the Geneva Conventions  
of 12 August 1949, and relating to the protection of victims of  
international armed conflicts (Protocol I)

*Article 85. Repression of breaches of this Protocol*

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse party protected by articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse party and are protected by this Protocol.

3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

(a) making the civilian population or individual civilians the object of attack;

(b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in article 57, paragraph 2 (a) (iii);

(c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in article 57, paragraph 2 (a) (iii);

(d) making non-defended localities and demilitarized zones the object of attack;

(e) making a person the object of attack in the knowledge that he is *hors de combat*;

(f) the perfidious use, in violation of article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:

(a) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;

(b) unjustifiable delay in the repatriation of prisoners of war or civilians;

(c) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

(d) making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result, extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;

(e) depriving a person protected by the Conventions or referred to in paragraph 2 of this article of the rights of fair and regular trial.

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

## 6. Convention for the Suppression of Unlawful Seizure of Aircraft

### *Article 1*

Any person who on board an aircraft in flight:

- (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or
  - (b) is an accomplice of a person who performs or attempts to perform any such act; or
- commits an offence (hereinafter referred to as "the offence").

## 7. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation

### *Article 1*

1. Any person commits an offence if he unlawfully and intentionally:

- (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
- (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
- (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
- (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
- (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

2. Any person also commits an offence if he:

- (a) attempts to commit any of the offences mentioned in paragraph 1 of this article; or
- (b) is an accomplice of a person who commits or attempts to commit any such offence.

## 8. International Convention on the Suppression and Punishment of the Crime of apartheid

### *Article II*

For the purpose of the present Convention, the term “the crime of apartheid,” which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) denial to a member or members of a racial group or groups of the right to life and liberty of person:

- (i) by murder of members of a racial group or groups;
- (ii) by the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
- (iii) by arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

(d) any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

9. Convention on the Prevention and Punishment  
of Crimes against internationally protected  
persons, including diplomatic agents

*Article 2*

1. The intentional commission of:

(a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

(b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty; and

(c) a threat to commit any such attack;

(d) an attempt to commit any such attack;

(e) an act constituting participation as an accomplice in any such attack;

shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

10. International Convention against the Taking of Hostages

*Article 1*

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

(a) attempts to commit an act of hostage-taking; or

(b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking;  
likewise commits an offence for the purposes of this Convention.

11. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

*Article 1*

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

...

*Article 4*

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

12. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

*Article 3*

1. Any person commits an offence if that person unlawfully and intentionally:

(a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or

(b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or

(c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or

(d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or

(e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or

(f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or

(g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

2. Any person also commits an offence if that person:

(a) attempts to commit any of the offences set forth in paragraph 1; or

(b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(c) threatens with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

### 13. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf

#### *Article 2*

1. Any person commits an offence if that person unlawfully and intentionally:

(a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or

(b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or

(c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or

(d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or

(e) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).

2. Any person also commits an offence if that person:

(a) attempts to commit any of the offences set forth in paragraph 1; or

(b) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.

#### 14. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

##### *Article 2. Scope of the Convention*

1. The purpose of this Convention is to promote cooperation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

2. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

3. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.

##### *Article 3. Offences and sanctions*

1. Each party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

(a) (i) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any

- narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;
- (ii) the cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;
- (iii) the possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;
- (iv) the manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;
- (v) the organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above;
- (b) (i) the conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;
- (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences;
- (c) subject to its constitutional principles and the basic concepts of its legal system:
- (i) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences;
- (ii) the possession of equipment or materials or substances listed in Table I and Table II, knowing that they are

- being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;
- (iii) publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;
  - (iv) participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(e) APPENDIX III

OUTLINE OF POSSIBLE WAYS WHEREBY A PERMANENT  
INTERNATIONAL CRIMINAL COURT MAY ENTER INTO  
RELATIONSHIP WITH THE UNITED NATIONS

1. The way in which a permanent international criminal court may enter into relationship with the United Nations must necessarily be considered in connection with the method adopted for its creation.
2. In this respect, two hypotheses may be envisaged: (a) the court becomes part of the organic structure of the United Nations; (b) the court does not become part of the organic structure of the United Nations.

A. The court becomes part of the organic  
structure of the United Nations

3. Under this hypothesis the court, as a result of the very act of its creation, is already in relationship with the United Nations. This may be achieved in two ways.

1. *The Court as a principal organ of the United Nations*

4. This solution would attach the maximum weight to the creation of the court by placing it on the same level with the other principal organs of the United Nations and, in particular, ICJ. It would also facilitate the *ipso jure* jurisdiction of the court over certain international crimes. Under this solution, the financing of the court would be provided for under the regular budget of the Organization.

5. On the other hand, this solution could give rise to potential obstacles in that it would require an amendment to the Charter of the United Nations under Chapter XVIII (Arts. 108-109). It should be noted, in this connection, that there is no precedent for the creation of any additional principal organ in the history of the Organization.

## 2. *The Court as a subsidiary organ of the United Nations*

6. By contrast, there is a well-developed practice whereby United Nations principal organs create subsidiary organs under the relevant provisions of the Charter of the United Nations (in particular, Arts. 22 and 29), for the performance of functions conferred upon them or upon the Organization as a whole by the Charter. There is practice along these lines even in the jurisdictional field. An early example is the establishment of the Administrative Tribunal of the United Nations.<sup>a</sup> A more recent example is the creation 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 (hereinafter referred to as the "International Tribunal").<sup>b</sup>

7. Normally and as concerns most fields of competence, the establishment of a subsidiary organ is essentially auxiliary in nature. The subsidiary organ's decisions will usually be in the nature of recommendations which the relevant principal organ is free to accept or reject.

8. In the judicial field, however, the subsidiary nature of an organ reflects itself mainly in the fact that its very existence, as well as the cessation of its functions, depends upon the relevant principal organ of the Organization. As regards the exercise of its functions, however, the very nature of the latter (judicial) makes them incompatible with the existence of hierarchical powers on the part of the principal organ which established the court or tribunal. Therefore, the principal organ has no power to reject or amend the decisions of the tribunal or court established. This was clearly ruled by ICJ as regards the Administrative Tribunal of the United Nations<sup>c</sup> and also arises from certain articles of the statute of the International Tribunal (arts. 13, 15, 25, 26, etc.).<sup>d</sup>

9. As regards financing, the activities of a subsidiary organ of the Organization are financed from United Nations sources, whether budgetary allocations, assessed contributions or voluntary contributions.<sup>e</sup>

10. It should also be noted that, occasionally, the General Assembly has set up tribunals as subsidiary organs, on the basis of provisions contained in treaties concluded outside the United Nations. This was the

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<sup>a</sup> General Assembly resolution 351 A (IV) of 9 December 1949.

<sup>b</sup> See Security Council resolutions 808 (1993) of 22 February 1993 and 827 (1991) of 25 May 1993.

<sup>c</sup> *Effect of awards of compensation made by the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954*, p. 62.

<sup>d</sup> Document S/25704, annex.

<sup>e</sup> See, for example, General Assembly resolution 48/251 of 14 April 1994.

case of the United Nations Tribunal for Libya and the United Nations Tribunal for Eritrea.<sup>f</sup> Although the matters dealt with by these tribunals were, broadly speaking, part of the generic competence of the General Assembly under Article 10 of the Charter of the United Nations, the provision which led to their creation was contained in annex XI, paragraph 3, of the Treaty of Peace with Italy.

11. The cases referred to in the preceding paragraph should be distinguished from those referred to in paragraphs 15 to 17 below in which the General Assembly undertakes certain functions with respect to organs established by the parties to a multilateral treaty.

B. The Court does not become part of the organic structure of the United Nations and is set up by a treaty

12. Under this hypothesis the court would be created by a treaty binding on States Parties thereto. There are two possible ways whereby such a court could be brought into relationship with the United Nations: by means of an agreement between the court and the United Nations; or by means of a resolution of a United Nations organ (such as the General Assembly).

*1. The Court comes into relationship with the United Nations by means of an agreement between the Court and the United Nations*

13. Cooperation agreements are the typical way whereby specialized agencies and analogous bodies enter into relationship with the United Nations under Articles 57 and 63 of the Charter of the United Nations. Agreements are concluded between the specialized agency concerned and the Economic and Social Council and are subject to the approval of the General Assembly. The agreements regulate, *inter alia*, matters of cooperation with the United Nations in the respective fields of action of each specialized agency and questions related to a common system as regards personnel policies. Each specialized agency constitutes an autonomous international organization with its own budget and financial resources.

14. A case in point is article XVI of the statute of IAEA,<sup>g</sup> dealing with “Relationship with other organizations” which provides that the Board of Governors, with the approval of the General Conference, is authorized to enter into an agreement or agreements establishing an appropriate relationship between IAEA and the United Nations and any

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<sup>f</sup> Set up, respectively, by General Assembly resolutions 388 A (V) of 15 December 1950 and 530 (VI) of 29 January 1952.

<sup>g</sup> United Nations, *Treaty Series*, vol. 276, p. 3.

other organizations the work of which is related to that of IAEA. The Agreement governing the relationship between the United Nations and IAEA was approved by the General Assembly.<sup>h</sup> The Agreement, *inter alia*, regulates the submission of reports by IAEA to the United Nations, the exchange of information and documents, matters of reciprocal representation, consideration of items in the respective agendas, cooperation with the Security Council and ICJ, coordination and cooperation matters, budgetary and financial arrangements and personnel arrangements.

15. The conclusion of an international agreement with the United Nations is also the way being envisaged by the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea to bring the projected tribunal into relationship with the United Nations. The final draft of that agreement<sup>i</sup> contemplates, *inter alia*, matters of legal relationship and mutual recognition, cooperation and coordination, relations with ICJ, relations with the Security Council, reciprocal representation, exchange of information and documents, reports to the United Nations, administrative cooperation and personnel arrangements. The draft agreement would also recognize "the desirability of establishing close budgetary and financial relationships with the United Nations in order that the administrative operations of the United Nations and the International Tribunal shall be carried out in the most efficient and economical manner possible, and that the maximum measure of coordination and uniformity with respect to these operations shall be secured."

2. *The Court comes into relationship with the United Nations by means of a resolution of a United Nations organ*

16. Finally, a court created by a multilateral treaty could also be brought into relationship with the United Nations by means of a resolution of a United Nations organ. In the case of a permanent international criminal court such a resolution could be adopted by the General Assembly, perhaps with the concurrent involvement of the Security Council.

17. It is in the field of the protection of human rights that international practice offers the most relevant examples of treaty organs coming into relationship with the United Nations by means of a General Assembly resolution. Typically, the treaty creating the organ already contains some provisions resorting to the United Nations for the performance of certain

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<sup>h</sup> General Assembly resolution 1145 (XII) of 14 November 1957, annex.

<sup>i</sup> See document LOS/PCN/SCN.4/WP.16/Add.4.

functions under the treaty, for example, the role of the Secretary-General in circulating invitations to States Parties for the election of the treaty organ, requests to the Secretary-General to provide the necessary staff and facilities for the effective performance of the functions of the treaty organ, and so forth. The United Nations, in its turn, takes such functions upon itself, by a resolution of the General Assembly which “adopts and opens for signature and ratification” the multilateral convention in question. Such a procedure has been followed, for instance, in the case of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

18. The adoption of such resolutions will usually have financial implications for the United Nations, making necessary the intervention of the Fifth Committee in the decision-making process. For instance, in the case of the Human Rights Committee, article 36 of the International Covenant on Civil and Political Rights provides that

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant,

and also article 35 provides that

The Members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

19. The International Convention on the Elimination of All Forms of Racial Discrimination establishing the Committee on the Elimination of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishing the Committee against Torture both provide that the secretariat of the Committees (staff and facilities) shall be provided by the Secretary-General of the United Nations (see art. 10, paras. 3–4 and art. 18, para. 3, respectively), even though the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides in article 18, paragraph 5, that

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations

for any expenses, such as the cost of staff and facilities, incurred by the United Nations. . . .

Unlike the International Covenant on Civil and Political Rights, however, these two conventions place upon the States Parties and not upon the United Nations the expenses of the members of the committee while they are in the performance of their duties (see art. 8, para. 6 and art. 17, para. 7, respectively).

20. In practice the General Assembly may accept, with regard to such committees created by treaty, additional obligations to those already contained in the treaties concerned. Thus, by resolution 47/111, the General Assembly

9. *Endorses the amendments to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and requests the Secretary-General:*

(a) To take the appropriate measures to provide for the financing of the committees established under the conventions from the regular budget of the United Nations, beginning with the budget for the biennium 1994–1995;

## 9. ARTICLES ON NATIONALITY OF NATURAL PERSONS IN RELATION TO THE SUCCESSION OF STATES\*

### *Preamble*

*Considering* that problems of nationality arising from succession of States concern the international community,

*Emphasizing* that nationality is essentially governed by internal law within the limits set by international law,

*Recognizing* that in matters concerning nationality, due account should be taken both of the legitimate interests of States and those of individuals,

*Recalling* that the Universal Declaration of Human Rights of 1948<sup>a</sup> proclaimed the right of every person to a nationality,

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\* Text adopted by the Commission at its fifty-first session, in 1999, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles as adopted by the Commission, appears in *Yearbook of the International Law Commission, 1999*, vol. II (Part Two). Text reproduced as it appears in the annex to General Assembly resolution 55/153 of 12 December 2000.

<sup>a</sup> General Assembly resolution 217 A (III) of 10 December 1948.

*Recalling also that the International Covenant on Civil and Political Rights of 1966<sup>b</sup> and the Convention on the Rights of the Child of 1989<sup>c</sup> recognize the right of every child to acquire a nationality,*

*Emphasizing that the human rights and fundamental freedoms of persons whose nationality may be affected by a succession of States must be fully respected,*

*Bearing in mind the provisions of the Convention on the reduction of statelessness of 1961,<sup>d</sup> the Vienna Convention on Succession of States in Respect of Treaties of 1978<sup>e</sup> and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983,<sup>f</sup>*

*Convinced of the need for the codification and progressive development of the rules of international law concerning nationality in relation to the succession of States as a means for ensuring greater juridical security for States and for individuals,*

## PART I. GENERAL PROVISIONS

### *Article 1. Right to a nationality*

Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present articles.

### *Article 2. Use of terms*

For the purposes of the present articles:

(a) “succession of States” means the replacement of one State by another in the responsibility for the international relations of territory;

(b) “predecessor State” means the State which has been replaced by another State on the occurrence of a succession of States;

(c) “successor State” means the State which has replaced another State on the occurrence of a succession of States;

(d) “state concerned” means the predecessor State or the successor State, as the case may be;

(e) “third State” means any State other than the predecessor State or the successor State;

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<sup>b</sup> See General Assembly resolution 2200 A (XXI) of 16 December 1966, annex.

<sup>c</sup> General Assembly resolution 44/25 of 20 November 1989, annex.

<sup>d</sup> United Nations, *Treaty Series*, vol. 989, No. 14458.

<sup>e</sup> *Ibid.*, vol. 1946, No. 33356.

<sup>f</sup> See A/CONF.117/14.

(f) “person concerned” means every individual who, on the date of the succession of States, had the nationality of the predecessor State and whose nationality may be affected by such succession;

(g) “date of the succession of States” means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates.

#### *Article 3. Cases of succession of States covered by the present articles*

The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

#### *Article 4. Prevention of statelessness*

States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession.

#### *Article 5. Presumption of nationality*

Subject to the provisions of the present articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession.

#### *Article 6. Legislation on nationality and other connected issues*

Each State concerned should, without undue delay, enact legislation on nationality and other connected issues arising in relation to the succession of States consistent with the provisions of the present articles. It should take all appropriate measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.

#### *Article 7. Effective date*

The attribution of nationality in relation to the succession of States, as well as the acquisition of nationality following the exercise of an option, shall take effect on the date of such succession, if persons concerned would otherwise be stateless during the period between the date of the succession of States and such attribution or acquisition of nationality.

*Article 8. Persons concerned having their habitual residence in another State*

1. A successor State does not have the obligation to attribute its nationality to persons concerned who have their habitual residence in another State and also have the nationality of that or any other State.

2. A successor State shall not attribute its nationality to persons concerned who have their habitual residence in another State against the will of the persons concerned unless they would otherwise become stateless.

*Article 9. Renunciation of the nationality of another State as a condition for attribution of nationality*

When a person concerned who is qualified to acquire the nationality of a successor State has the nationality of another State concerned, the former State may make the attribution of its nationality dependent on the renunciation by such person of the nationality of the latter State. However, such requirement shall not be applied in a manner which would result in rendering the person concerned stateless, even if only temporarily.

*Article 10. Loss of nationality upon the voluntary acquisition of the nationality of another State*

1. A predecessor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of a successor State shall lose its nationality.

2. A successor State may provide that person concerned who, in relation to the succession of States, voluntarily acquire the nationality of another successor State or, as the case may be, retain the nationality of the predecessor State shall lose its nationality acquired in relation to such succession.

*Article 11. Respect for the will of persons concerned*

1. States concerned shall give consideration to the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States concerned.

2. Each State concerned shall grant a right to opt for its nationality to persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States.

3. When persons entitled to the right of option have exercised such right, the State whose nationality they have opted for shall attribute its nationality to such persons.

4. When persons entitled to the right of option have exercised such right, the State whose nationality they have renounced shall withdraw its nationality from such persons, unless they would thereby become stateless.

5. States concerned should provide a reasonable time limit for the exercise of the right of option.

#### *Article 12. Unity of a family*

Where the acquisition or loss of nationality in relation to the succession of States would impair the unity of a family, States concerned shall take all appropriate measures to allow that family to remain together or to be reunited.

#### *Article 13. Child born after the succession of States*

A child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born.

#### *Article 14. Status of habitual residents*

1. The status of persons concerned as habitual residents shall not be affected by the succession of States.

2. A State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto.

#### *Article 15. Non-discrimination*

States concerned shall not deny persons concerned the right to retain or acquire a nationality or the right of option upon the succession of States by discriminating on any ground.

#### *Article 16. Prohibition of arbitrary decisions concerning nationality issues*

Persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State or any right of option, to which they are entitled in relation to the succession of States.

*Article 17. Procedures relating to nationality issues*

Applications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option, in relation to the succession of States, shall be processed without undue delay. Relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.

*Article 18. Exchange of information, consultation and negotiation*

1. States concerned shall exchange information and consult in order to identify any detrimental effects on persons concerned with respect to their nationality and other connected issues regarding their status as a result of the succession of States.
2. States concerned shall, when necessary, seek a solution to eliminate or mitigate such detrimental effects by negotiation and, as appropriate, through agreement.

*Article 19. Other States*

1. Nothing in the present articles requires States to treat persons concerned having no effective link with a State concerned as nationals of that State, unless this would result in treating those persons as if they were stateless.

2. Nothing in the present articles precludes States from treating persons concerned, who have become stateless as a result of the succession of States, as nationals of the State concerned whose nationality they would be entitled to acquire or retain, if such treatment is beneficial to those persons.

**PART II. PROVISIONS RELATING TO SPECIFIC CATEGORIES  
OF SUCCESSION OF STATES****Section 1. Transfer of part of the territory***Article 20. Attribution of the nationality of the successor State and withdrawal of the nationality of the predecessor State*

When part of the territory of a State is transferred by that State to another State, the successor State shall attribute its nationality to the persons concerned who have their habitual residence in the transferred territory and the predecessor State shall withdraw its nationality from such persons, unless otherwise indicated by the exercise of the right of option which such persons shall be granted. The predecessor State shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

## Section 2. Unification of States

### *Article 21. Attribution of the nationality of the successor State*

Subject to the provisions of article 8, when two or more States unite and so form one successor State, irrespective of whether the successor State is a new State or whether its personality is identical to that of one of the States which have united, the successor State shall attribute its nationality to all persons who, on the date of the succession of States, had the nationality of a predecessor State.

## Section 3. Dissolution of a State

### *Article 22. Attribution of the nationality of the successor States*

When a State dissolves and ceases to exist and the various parts of the territory of the predecessor State form two or more successor States, each successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

- (a) persons concerned having their habitual residence in its territory; and
- (b) subject to the provisions of article 8:
  - (i) persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;
  - (ii) persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

### *Article 23. Granting of the right of option by the successor States*

1. Successor States shall grant a right of option to persons concerned covered by the provisions of article 22 who are qualified to acquire the nationality of two or more successor States.
2. Each successor State shall grant a right to opt for its nationality to persons concerned who are not covered by the provisions of article 22.

#### Section 4. Separation of part or parts of the territory

##### *Article 24. Attribution of the nationality of the successor State*

When part or parts of the territory of a State separate from that State and form one or more successor States while the predecessor State continues to exist, a successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(a) persons concerned having their habitual residence in its territory; and

(b) subject to the provisions of article 8:

- (i) persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;
- (ii) persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

##### *Article 25. Withdrawal of the nationality of the predecessor State*

1. The predecessor State shall withdraw its nationality from persons concerned qualified to acquire the nationality of the successor State in accordance with article 24. It shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

2. Unless otherwise indicated by the exercise of a right of option, the predecessor State shall not, however, withdraw its nationality from persons referred to in paragraph 1 who:

(a) have their habitual residence in its territory;

(b) are not covered by subparagraph (a) and have an appropriate legal connection with a constituent unit of the predecessor State that has remained part of the predecessor State;

(c) have their habitual residence in a third State, and were born in or, before leaving the predecessor State, had their last habitual residence in what has remained part of the territory of the predecessor State or have any other appropriate connection with that State.

*Article 26. Granting of the right of option by the predecessor  
and the successor States*

Predecessor and successor States shall grant a right of option to all persons concerned covered by the provisions of article 24 and paragraph 2 of article 25 who are qualified to have the nationality of both the predecessor and successor States or of two or more successor States.

**10. ARTICLES ON THE RESPONSIBILITY OF STATES FOR  
INTERNATIONALLY WRONGFUL ACTS\***

Part One. The internationally wrongful act of a state

Chapter I. General principles

*Article 1. Responsibility of a State for its internationally  
wrongful acts*

Every internationally wrongful act of a State entails the international responsibility of that State.

*Article 2. Elements of an internationally wrongful act of a State*

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) is attributable to the State under international law; and
- (b) constitutes a breach of an international obligation of the State.

*Article 3. Characterization of an act of a State  
as internationally wrongful*

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

Chapter II. Attribution of conduct to a State

*Article 4. Conduct of organs of a State*

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it

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\* Text adopted by the Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles as adopted by the Commission, appears in *Yearbook of the International Law Commission, 2001*, vol. II (Part Two). Text reproduced as it appears in the annex to General Assembly resolution 56/83 of 12 December 2001.

holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

*Article 5. Conduct of persons or entities exercising elements of governmental authority*

The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.

*Article 6. Conduct of organs placed at the disposal of a State by another State*

The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed.

*Article 7. Excess of authority or contravention of instructions*

The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.

*Article 8. Conduct directed or controlled by a State*

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

*Article 9. Conduct carried out in the absence or default of the official authorities*

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

*Article 10. Conduct of an insurrectional or other movement*

1. The conduct of an insurrectional movement which becomes the new Government of a State shall be considered an act of that State under international law.

2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.

3. This article is without prejudice to the attribution to a State of any conduct, however related to that of the movement concerned, which is to be considered an act of that State by virtue of articles 4 to 9.

*Article 11. Conduct acknowledged and adopted  
by a State as its own*

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

### Chapter III. Breach of an international obligation

*Article 12. Existence of a breach of an international obligation*

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

*Article 13. International obligation in force for a State*

An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.

*Article 14. Extension in time of the breach  
of an international obligation*

1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.

3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

*Article 15. Breach consisting of a composite act*

1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

**Chapter IV. Responsibility of a State in connection with the act of another State**

*Article 16. Aid or assistance in the commission of an internationally wrongful act*

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

*Article 17. Direction and control exercised over the commission of an internationally wrongful act*

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

*Article 18. Coercion of another State*

A State which coerces another State to commit an act is internationally responsible for that act if:

(a) the act would, but for the coercion, be an internationally wrongful act of the coerced State; and

(b) the coercing State does so with knowledge of the circumstances of the act.

*Article 19. Effect of this chapter*

This chapter is without prejudice to the international responsibility, under other provisions of these articles, of the State which commits the act in question, or of any other State.

Chapter V. Circumstances precluding wrongfulness

*Article 20. Consent*

Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.

*Article 21. Self-defence*

The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.

*Article 22. Countermeasures in respect of an internationally wrongful act*

The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of part three.

*Article 23. Force majeure*

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act is due to *force majeure*, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

(a) the situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the State invoking it; or

(b) the State has assumed the risk of that situation occurring.

*Article 24. Distress*

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

- (a) the situation of distress is due, either alone or in combination with other factors, to the conduct of the State invoking it; or
- (b) the act in question is likely to create a comparable or greater peril.

*Article 25. Necessity*

1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:

- (a) Is the only way for the State to safeguard an essential interest against a grave and imminent peril; and
- (b) Does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:

- (a) the international obligation in question excludes the possibility of invoking necessity; or
- (b) the State has contributed to the situation of necessity.

*Article 26. Compliance with peremptory norms*

Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.

*Article 27. Consequences of invoking a circumstance precluding wrongfulness*

The invocation of a circumstance precluding wrongfulness in accordance with this chapter is without prejudice to:

- (a) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;

- (b) the question of compensation for any material loss caused by the act in question.

## PART Two. CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF A STATE

### Chapter I. General principles

#### *Article 28. Legal consequences of an internationally wrongful act*

The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of part one involves legal consequences as set out in this part.

#### *Article 29. Continued duty of performance*

The legal consequences of an internationally wrongful act under this part do not affect the continued duty of the responsible State to perform the obligation breached.

#### *Article 30. Cessation and non-repetition*

The State responsible for the internationally wrongful act is under an obligation:

- (a) to cease that act, if it is continuing;
- (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

#### *Article 31. Reparation*

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

#### *Article 32. Irrelevance of internal law*

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this part.

#### *Article 33. Scope of international obligations set out in this part*

1. The obligations of the responsible State set out in this part may be owed to another State, to several States, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

2. This part is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State.

## Chapter II. Reparation for injury

### *Article 34. Forms of reparation*

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

### *Article 35. Restitution*

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) is not materially impossible;
- (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

### *Article 36. Compensation*

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

### *Article 37. Satisfaction*

1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.

*Article 38. Interest*

1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

*Article 39. Contribution to the injury*

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought.

Chapter III. Serious breaches of obligations under peremptory norms of general international law

*Article 40. Application of this chapter*

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

*Article 41. Particular consequences of a serious breach of an obligation under this chapter*

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.

2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.

3. This article is without prejudice to the other consequences referred to in this part and to such further consequences that a breach to which this chapter applies may entail under international law.

PART THREE. THE IMPLEMENTATION OF THE INTERNATIONAL  
RESPONSIBILITY OF A STATE

Chapter I. Invocation of the responsibility of a State

*Article 42. Invocation of responsibility by an injured State*

A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:

- (a) that State individually; or
- (b) a group of States including that State, or the international community as a whole, and the breach of the obligation:
  - (i) specially affects that State; or
  - (ii) is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.

*Article 43. Notice of claim by an injured State*

- 1. An injured State which invokes the responsibility of another State shall give notice of its claim to that State.
- 2. The injured State may specify in particular:
  - (a) the conduct that the responsible State should take in order to cease the wrongful act, if it is continuing;
  - (b) what form reparation should take in accordance with the provisions of part two.

*Article 44. Admissibility of claims*

The responsibility of a State may not be invoked if:

- (a) the claim is not brought in accordance with any applicable rule relating to the nationality of claims;
- (b) the claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.

*Article 45. Loss of the right to invoke responsibility*

The responsibility of a State may not be invoked if:

- (a) the injured State has validly waived the claim;
- (b) the injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

*Article 46. Plurality of injured States*

Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act.

*Article 47. Plurality of responsible States*

1. Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.

2. Paragraph 1:

(a) does not permit any injured State to recover, by way of compensation, more than the damage it has suffered;

(b) is without prejudice to any right of recourse against the other responsible States.

*Article 48. Invocation of responsibility by a State other than an injured State*

1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:

(a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or

(b) the obligation breached is owed to the international community as a whole.

2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:

(a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and

(b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.

3. The requirements for the invocation of responsibility by an injured State under articles 43, 44 and 45 apply to an invocation of responsibility by a State entitled to do so under paragraph 1.

## Chapter II. Countermeasures

### *Article 49. Object and limits of countermeasures*

1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under part two.
2. Countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State.
3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

### *Article 50. Obligations not affected by countermeasures*

1. Countermeasures shall not affect:
  - (a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;
  - (b) obligations for the protection of fundamental human rights;
  - (c) obligations of a humanitarian character prohibiting reprisals;
  - (d) other obligations under peremptory norms of general international law.
2. A State taking countermeasures is not relieved from fulfilling its obligations:
  - (a) under any dispute settlement procedure applicable between it and the responsible State;
  - (b) to respect the inviolability of diplomatic or consular agents, premises, archives and documents.

### *Article 51. Proportionality*

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

### *Article 52. Conditions relating to resort to countermeasures*

1. Before taking countermeasures, an injured State shall:
  - (a) call upon the responsible State, in accordance with article 43, to fulfil its obligations under part two;
  - (b) notify the responsible State of any decision to take countermeasures and offer to negotiate with that State.

2. Notwithstanding paragraph 1 (b), the injured State may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:

(a) the internationally wrongful act has ceased; and

(b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible State fails to implement the dispute settlement procedures in good faith.

#### *Article 53. Termination of countermeasures*

Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under part two in relation to the internationally wrongful act.

#### *Article 54. Measures taken by States other than an injured State*

This chapter does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached.

### PART FOUR. GENERAL PROVISIONS

#### *Article 55. Lex specialis*

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.

#### *Article 56. Questions of State responsibility not regulated by these articles*

The applicable rules of international law continue to govern questions concerning the responsibility of a State for an internationally wrongful act to the extent that they are not regulated by these articles.

#### *Article 57. Responsibility of an international organization*

These articles are without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization.

*Article 58. Individual responsibility*

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.

*Article 59. Charter of the United Nations*

These articles are without prejudice to the Charter of the United Nations.

**11. ARTICLES ON THE PREVENTION OF TRANSBOUNDARY HARM FROM HAZARDOUS ACTIVITIES\***

*The States Parties,*

*Having in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,*

*Bearing in mind the principle of permanent sovereignty of States over the natural resources within their territory or otherwise under their jurisdiction or control,*

*Bearing in mind also that the freedom of States to carry on or permit activities in their territory or otherwise under their jurisdiction or control is not unlimited,*

*Recalling the Rio Declaration on Environment and Development of 13 June 1992,*

*Recognizing the importance of promoting international cooperation,*

*Have agreed as follows:*

*Article 1. Scope*

The present articles apply to activities not prohibited by international law which involve a risk of causing significant transboundary harm through their physical consequences.

*Article 2. Use of terms*

For the purposes of the present articles:

(a) “risk of causing significant transboundary harm” includes risks taking the form of a high probability of causing significant trans-

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\* Text adopted by the Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session. The report, which also contains commentaries on the draft articles as adopted by the Commission, appears in *Yearbook of the International Law Commission, 2001*, vol. II (Part Two). Text reproduced as it appears in the annex to General Assembly resolution 62/68 of 6 December 2007.

boundary harm and a low probability of causing disastrous transboundary harm;

(b) "harm" means harm caused to persons, property or the environment;

(c) "transboundary harm" means harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin, whether or not the States concerned share a common border;

(d) "State of origin" means the State in the territory or otherwise under the jurisdiction or control of which the activities referred to in article 1 are planned or are carried out;

(e) "State likely to be affected" means the State or States in the territory of which there is the risk of significant transboundary harm or which have jurisdiction or control over any other place where there is such a risk;

(f) "States concerned" means the State of origin and the State likely to be affected.

### *Article 3. Prevention*

The State of origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof.

### *Article 4. Cooperation*

States concerned shall cooperate in good faith and, as necessary, seek the assistance of one or more competent international organizations in preventing significant transboundary harm or at any event in minimizing the risk thereof.

### *Article 5. Implementation*

States concerned shall take the necessary legislative, administrative or other action including the establishment of suitable monitoring mechanisms to implement the provisions of the present articles.

### *Article 6. Authorization*

1. The State of origin shall require its prior authorization for:

(a) any activity within the scope of the present articles carried out in its territory or otherwise under its jurisdiction or control;

(b) any major change in an activity referred to in subparagraph (a);

(c) any plan to change an activity which may transform it into one falling within the scope of the present articles.

2. The requirement of authorization established by a State shall be made applicable in respect of all pre-existing activities within the scope of the present articles. Authorizations already issued by the State for pre-existing activities shall be reviewed in order to comply with the present articles.

3. In case of a failure to conform to the terms of the authorization, the State of origin shall take such actions as appropriate, including where necessary terminating the authorization.

#### *Article 7. Assessment of risk*

Any decision in respect of the authorization of an activity within the scope of the present articles shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment.

#### *Article 8. Notification and information*

1. If the assessment referred to in article 7 indicates a risk of causing significant transboundary harm, the State of origin shall provide the State likely to be affected with timely notification of the risk and the assessment and shall transmit to it the available technical and all other relevant information on which the assessment is based.

2. The State of origin shall not take any decision on authorization of the activity pending the receipt, within a period not exceeding six months, of the response from the State likely to be affected.

#### *Article 9. Consultations on preventive measures*

1. The States concerned shall enter into consultations, at the request of any of them, with a view to achieving acceptable solutions regarding measures to be adopted in order to prevent significant transboundary harm or at any event to minimize the risk thereof. The States concerned shall agree, at the commencement of such consultations, on a reasonable time frame for the consultations.

2. The States concerned shall seek solutions based on an equitable balance of interests in the light of article 10.

3. If the consultations referred to in paragraph 1 fail to produce an agreed solution, the State of origin shall nevertheless take into account the interests of the State likely to be affected in case it decides to authorize the activity to be pursued, without prejudice to the rights of any State likely to be affected.

*Article 10. Factors involved in an equitable balance of interests*

In order to achieve an equitable balance of interests as referred to in paragraph 2 of article 9, the States concerned shall take into account all relevant factors and circumstances, including:

- (a) the degree of risk of significant transboundary harm and of the availability of means of preventing such harm, or minimizing the risk thereof or repairing the harm;
- (b) the importance of the activity, taking into account its overall advantages of a social, economic and technical character for the State of origin in relation to the potential harm for the State likely to be affected;
- (c) the risk of significant harm to the environment and the availability of means of preventing such harm, or minimizing the risk thereof or restoring the environment;
- (d) the degree to which the State of origin and, as appropriate, the State likely to be affected are prepared to contribute to the costs of prevention;
- (e) the economic viability of the activity in relation to the costs of prevention and to the possibility of carrying out the activity elsewhere or by other means or replacing it with an alternative activity;
- (f) the standards of prevention which the State likely to be affected applies to the same or comparable activities and the standards applied in comparable regional or international practice.

*Article 11. Procedures in the absence of notification*

1. If a State has reasonable grounds to believe that an activity planned or carried out in the State of origin may involve a risk of causing significant transboundary harm to it, it may request the State of origin to apply the provision of article 8. The request shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State of origin nevertheless finds that it is not under an obligation to provide a notification under article 8, it shall so inform the requesting State within a reasonable time, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy that State, at its request, the two States shall promptly enter into consultations in the manner indicated in article 9.

3. During the course of the consultations, the State of origin shall, if so requested by the other State, arrange to introduce appropriate and feasible measures to minimize the risk and, where appropriate, to suspend the activity in question for a reasonable period.

*Article 12. Exchange of information*

While the activity is being carried out, the States concerned shall exchange in a timely manner all available information concerning that activity relevant to preventing significant transboundary harm or at any event minimizing the risk thereof. Such an exchange of information shall continue until such time as the States concerned consider it appropriate even after the activity is terminated.

*Article 13. Information to the public*

States concerned shall, by such means as are appropriate, provide the public likely to be affected by an activity within the scope of the present articles with relevant information relating to that activity, the risk involved and the harm which might result and ascertain their views.

*Article 14. National security and industrial secrets*

Data and information vital to the national security of the State of origin or to the protection of industrial secrets or concerning intellectual property may be withheld, but the State of origin shall cooperate in good faith with the State likely to be affected in providing as much information as possible under the circumstances.

*Article 15. Non-discrimination*

Unless the States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who may be or are exposed to the risk of significant transboundary harm as a result of an activity within the scope of the present articles, a State shall not discriminate on the basis of nationality or residence or place where the injury might occur, in granting to such persons, in accordance with its legal system, access to judicial or other procedures to seek protection or other appropriate redress.

*Article 16. Emergency preparedness*

The State of origin shall develop contingency plans for responding to emergencies, in cooperation, where appropriate, with the State likely to be affected and competent international organizations.

*Article 17. Notification of an emergency*

The State of origin shall, without delay and by the most expeditious means, at its disposal, notify the State likely to be affected of an emer-

gency concerning an activity within the scope of the present articles and provide it with all relevant and available information.

*Article 18. Relationship to other rules of international law*

The present articles are without prejudice to any obligation incurred by States under relevant treaties or rules of customary international law.

*Article 19. Settlement of disputes*

1. Any dispute concerning the interpretation or application of the present articles shall be settled expeditiously through peaceful means of settlement chosen by mutual agreement of the parties to the dispute, including negotiations, mediation, conciliation, arbitration or judicial settlement.

2. Failing an agreement on the means for the peaceful settlement of the dispute within a period of six months, the parties to the dispute shall, at the request of any of them, have recourse to the establishment of an impartial fact-finding commission.

3. The Fact-finding Commission shall be composed of one member nominated by each party to the dispute and in addition a member not having the nationality of any of the parties to the dispute chosen by the nominated members who shall serve as Chairperson.

4. If more than one State is involved on one side of the dispute and those States do not agree on a common member of the Commission and each of them nominates a member, the other party to the dispute has the right to nominate an equal number of members of the Commission.

5. If the members nominated by the parties to the dispute are unable to agree on a Chairperson within three months of the request for the establishment of the Commission, any party to the dispute may request the Secretary-General of the United Nations to appoint the Chairperson who shall not have the nationality of any of the parties to the dispute. If one of the parties to the dispute fails to nominate a member within three months of the initial request pursuant to paragraph 2, any other party to the dispute may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute. The person so appointed shall constitute a single-member Commission.

6. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the parties to the dispute setting forth its findings and recommendations, which the parties to the dispute shall consider in good faith.

12. PRINCIPLES ON THE ALLOCATION OF LOSS IN THE CASE OF  
TRANSBOUNDARY HARM ARISING OUT OF HAZARDOUS ACTIVITIES\*

*The General Assembly,*

*Reaffirming Principles 13 and 16 of the Rio Declaration on Environment and Development,*

*Recalling the Draft articles on the Prevention of Transboundary Harm from Hazardous Activities,*

*Aware that incidents involving hazardous activities may occur despite compliance by the relevant State with its obligations concerning prevention of transboundary harm from hazardous activities,*

*Noting that as a result of such incidents other States and/or their nationals may suffer harm and serious loss,*

*Emphasizing that appropriate and effective measures should be in place to ensure that those natural and legal persons, including States, that incur harm and loss as a result of such incidents are able to obtain prompt and adequate compensation,*

*Concerned that prompt and effective response measures should be taken to minimize the harm and loss which may result from such incidents,*

*Noting that States are responsible for infringements of their obligations of prevention under international law,*

*Recalling the significance of existing international agreements covering specific categories of hazardous activities and stressing the importance of the conclusion of further such agreements,*

*Desiring to contribute to the development of international law in this field,*

*Principle 1. Scope of application*

The present draft principles apply to transboundary damage caused by hazardous activities not prohibited by international law.

*Principle 2 Use of terms*

For the purposes of the present draft principles:

(a) “damage” means significant damage caused to persons, property or the environment; and includes:

- (i) loss of life or personal injury;

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\* Text adopted by the Commission at its fifty-eighth session, in 2006, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft principles as adopted by the Commission, appears in *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10, para. 66). Text reproduced as it appears in the annex to General Assembly resolution 61/36 of 18 December 2006.

- (ii) loss of, or damage to, property, including property which forms part of the cultural heritage;
  - (iii) loss or damage by impairment of the environment;
  - (iv) the costs of reasonable measures of reinstatement of the property, or environment, including natural resources;
  - (v) the costs of reasonable response measures;
- (b) “environment” includes natural resources, both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors, and the characteristic aspects of the landscape;
- (c) “hazardous activity” means an activity which involves a risk of causing significant harm;
- (d) “State of origin” means the State in the territory or otherwise under the jurisdiction or control of which the hazardous activity is carried out;
- (e) “transboundary damage” means damage caused to persons, property or the environment in the territory or in other places under the jurisdiction or control of a State other than the State of origin;
- (f) “victim” means any natural or legal person or State that suffers damage;
- (g) “operator” means any person in command or control of the activity at the time the incident causing transboundary damage occurs.

### *Principle 3. Purposes*

The purposes of the present draft principles are:

- (a) to ensure prompt and adequate compensation to victims of transboundary damage; and
- (b) to preserve and protect the environment in the event of transboundary damage, especially with respect to mitigation of damage to the environment and its restoration or reinstatement.

### *Principle 4. Prompt and adequate compensation*

1. Each State should take all necessary measures to ensure that prompt and adequate compensation is available for victims of transboundary damage caused by hazardous activities located within its territory or otherwise under its jurisdiction or control.
2. These measures should include the imposition of liability on the operator or, where appropriate, other person or entity. Such liability should not require proof of fault. Any conditions, limitations or exceptions to such liability shall be consistent with draft principle 3.

3. These measures should also include the requirement on the operator or, where appropriate, other person or entity, to establish and maintain financial security such as insurance, bonds or other financial guarantees to cover claims of compensation.

4. In appropriate cases, these measures should include the requirement for the establishment of industry-wide funds at the national level.

5. In the event that the measures under the preceding paragraphs are insufficient to provide adequate compensation, the State of origin should also ensure that additional financial resources are made available.

*Principle 5. Response measures*

Upon the occurrence of an incident involving a hazardous activity which results or is likely to result in transboundary damage:

(a) the State of origin shall promptly notify all States affected or likely to be affected of the incident and the possible effects of the transboundary damage;

(b) the State of origin, with the appropriate involvement of the operator, shall ensure that appropriate response measures are taken and should, for this purpose, rely upon the best available scientific data and technology;

(c) the State of origin, as appropriate, should also consult with and seek the cooperation of all States affected or likely to be affected to mitigate the effects of transboundary damage and if possible eliminate them;

(d) the States affected or likely to be affected by the transboundary damage shall take all feasible measures to mitigate and if possible to eliminate the effects of such damage;

(e) the States concerned should, where appropriate, seek the assistance of competent international organizations and other States on mutually acceptable terms and conditions.

*Principle 6. International and domestic remedies*

1. States shall provide their domestic judicial and administrative bodies with the necessary jurisdiction and competence and ensure that these bodies have prompt, adequate and effective remedies available in the event of transboundary damage caused by hazardous activities located within their territory or otherwise under their jurisdiction or control.

2. Victims of transboundary damage should have access to remedies in the State of origin that are no less prompt, adequate and effective than those available to victims that suffer damage, from the same incident, within the territory of that State.

3. Paragraphs 1 and 2 are without prejudice to the right of the victims to seek remedies other than those available in the State of origin.

4. States may provide for recourse to international claims settlement procedures that are expeditious and involve minimal expenses.

5. States should guarantee appropriate access to information relevant for the pursuance of remedies, including claims for compensation.

*Principle 7. Development of specific international regimes*

1. Where, in respect of particular categories of hazardous activities, specific global, regional or bilateral agreements would provide effective arrangements concerning compensation, response measures and international and domestic remedies, all efforts should be made to conclude such specific agreements.

2. Such agreements should, as appropriate, include arrangements for industry and/or State funds to provide supplementary compensation in the event that the financial resources of the operator, including financial security measures, are insufficient to cover the damage suffered as a result of an incident. Any such funds may be designed to supplement or replace national industry-based funds.

*Principle 8. Implementation*

1. Each State should adopt the necessary legislative, regulatory and administrative measures to implement the present draft principles.

2. The present draft principles and the measures adopted to implement them shall be applied without any discrimination such as that based on nationality, domicile or residence.

3. States should cooperate with each other to implement the present draft principles.

13. ARTICLES ON DIPLOMATIC PROTECTION\*

Part One. General Provisions

*Article 1. Definition and scope*

For the purposes of the present draft articles, diplomatic protection consists of the invocation by a State, through diplomatic action or other

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\* Text adopted by the Commission at its Fifty-eighth session, in 2006, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles as adopted by the Commission, appears in *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10). Text reproduced as it appears in the annex to General Assembly resolution 62/67 of 4 December 2007.

means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.

*Article 2. Right to exercise diplomatic protection*

A State has the right to exercise diplomatic protection in accordance with the present draft articles.

Part Two. Nationality

Chapter I. General Principles

*Article 3. Protection by the State of nationality*

1. The State entitled to exercise diplomatic protection is the State of nationality.

2. Notwithstanding paragraph 1, diplomatic protection may be exercised by a State in respect of a person that is not its national in accordance with draft article 8.

Chapter II. Natural Persons

*Article 4. State of nationality of a natural person*

For the purposes of the diplomatic protection of a natural person, a State of nationality means a State whose nationality that person has acquired, in accordance with the law of that State, by birth, descent, naturalization, succession of States or in any other manner, not inconsistent with international law.

*Article 5. Continuous nationality of a natural person*

1. A State is entitled to exercise diplomatic protection in respect of a person who was a national of that State continuously from the date of injury to the date of the official presentation of the claim. Continuity is presumed if that nationality existed at both these dates.

2. Notwithstanding paragraph 1, a State may exercise diplomatic protection in respect of a person who is its national at the date of the official presentation of the claim but was not a national at the date of injury, provided that the person had the nationality of a predecessor State or lost his or her previous nationality and acquired, for a reason unrelated to the bringing of the claim, the nationality of the former State in a manner not inconsistent with international law.

3. Diplomatic protection shall not be exercised by the present State of nationality in respect of a person against a former State of nationality of that person for an injury caused when that person was a national of the former State of nationality and not of the present State of nationality.

4. A State is no longer entitled to exercise diplomatic protection in respect of a person who acquires the nationality of the State against which the claim is brought after the date of the official presentation of the claim.

*Article 6. Multiple nationality and claim against a third State*

1. Any State of which a dual or multiple national is a national may exercise diplomatic protection in respect of that national against a State of which that person is not a national.

2. Two or more States of nationality may jointly exercise diplomatic protection in respect of a dual or multiple national.

*Article 7. Multiple nationality and claim against  
a State of nationality*

A State of nationality may not exercise diplomatic protection in respect of a person against a State of which that person is also a national unless the nationality of the former State is predominant, both at the date of injury and at the date of the official presentation of the claim.

*Article 8. Stateless persons and refugees*

1. A State may exercise diplomatic protection in respect of a stateless person who, at the date of injury and at the date of the official presentation of the claim, is lawfully and habitually resident in that State.

2. A State may exercise diplomatic protection in respect of a person who is recognized as a refugee by that State, in accordance with internationally accepted standards, when that person, at the date of injury and at the date of the official presentation of the claim, is lawfully and habitually resident in that State.

3. Paragraph 2 does not apply in respect of an injury caused by an internationally wrongful act of the State of nationality of the refugee.

**Chapter III. Legal Persons**

*Article 9. State of nationality of a corporation*

For the purposes of the diplomatic protection of a corporation, the State of nationality means the State under whose law the corporation was incorporated. However, when the corporation is controlled by nationals

of another State or States and has no substantial business activities in the State of incorporation, and the seat of management and the financial control of the corporation are both located in another State, that State shall be regarded as the State of nationality.

*Article 10. Continuous nationality of a corporation*

1. A State is entitled to exercise diplomatic protection in respect of a corporation that was a national of that State, or its predecessor State, continuously from the date of injury to the date of the official presentation of the claim. Continuity is presumed if that nationality existed at both these dates.
2. A State is no longer entitled to exercise diplomatic protection in respect of a corporation that acquires the nationality of the State against which the claim is brought after the presentation of the claim.
3. Notwithstanding paragraph 1, a State continues to be entitled to exercise diplomatic protection in respect of a corporation which was its national at the date of injury and which, as the result of the injury, has ceased to exist according to the law of the State of incorporation.

*Article 11. Protection of shareholders*

A State of nationality of shareholders in a corporation shall not be entitled to exercise diplomatic protection in respect of such shareholders in the case of an injury to the corporation unless:

- (a) the corporation has ceased to exist according to the law of the State of incorporation for a reason unrelated to the injury; or
- (b) the corporation had, at the date of injury, the nationality of the State alleged to be responsible for causing the injury, and incorporation in that State was required by it as a precondition for doing business there.

*Article 12. Direct injury to shareholders*

To the extent that an internationally wrongful act of a State causes direct injury to the rights of shareholders as such, as distinct from those of the corporation itself, the State of nationality of any such shareholders is entitled to exercise diplomatic protection in respect of its nationals.

*Article 13. Other legal persons*

The principles contained in this chapter shall be applicable, as appropriate, to the diplomatic protection of legal persons other than corporations.

### Part Three. Local Remedies

#### *Article 14. Exhaustion of local remedies*

1. A State may not present an international claim in respect of an injury to a national or other person referred to in draft article 8 before the injured person has, subject to draft article 15, exhausted all local remedies.

2. "Local remedies" means legal remedies which are open to an injured person before the judicial or administrative courts or bodies, whether ordinary or special, of the State alleged to be responsible for causing the injury.

3. Local remedies shall be exhausted where an international claim, or request for a declaratory judgement related to the claim, is brought preponderantly on the basis of an injury to a national or other person referred to in draft article 8.

#### *Article 15. Exceptions to the local remedies rule*

Local remedies do not need to be exhausted where:

(a) there are no reasonably available local remedies to provide effective redress, or the local remedies provide no reasonable possibility of such redress;

(b) there is undue delay in the remedial process which is attributable to the State alleged to be responsible;

(c) there was no relevant connection between the injured person and the State alleged to be responsible at the date of injury;

(d) the injured person is manifestly precluded from pursuing local remedies; or

(e) the State alleged to be responsible has waived the requirement that local remedies be exhausted.

### Part Four. Miscellaneous Provisions

#### *Article 16. Actions or procedures other than diplomatic protection*

The rights of States, natural persons, legal persons or other entities to resort under international law to actions or procedures other than diplomatic protection to secure redress for injury suffered as a result of an internationally wrongful act, are not affected by the present draft articles.

*Article 17. Special rules of international law*

The present draft articles do not apply to the extent that they are inconsistent with special rules of international law, such as treaty provisions for the protection of investments.

*Article 18. Protection of ships' crews*

The right of the State of nationality of the members of the crew of a ship to exercise diplomatic protection is not affected by the right of the State of nationality of a ship to seek redress on behalf of such crew members, irrespective of their nationality, when they have been injured in connection with an injury to the vessel resulting from an internationally wrongful act.

*Article 19. Recommended practice*

A State entitled to exercise diplomatic protection according to the present draft articles, should:

- (a) give due consideration to the possibility of exercising diplomatic protection, especially when a significant injury has occurred;
- (b) take into account, wherever feasible, the views of injured persons with regard to resort to diplomatic protection and the reparation to be sought; and
- (c) transfer to the injured person any compensation obtained for the injury from the responsible State subject to any reasonable deductions.

**14. GUIDING PRINCIPLES APPLICABLE TO UNILATERAL DECLARATIONS OF STATES CAPABLE OF CREATING LEGAL OBLIGATIONS\***

*The International Law Commission,*

*Noting that States may find themselves bound by their unilateral behaviour on the international plane,*

*Noting that behaviours capable of legally binding States may take the form of formal declarations or mere informal conduct including, in certain situations, silence, on which other States may reasonably rely,*

*Noting also that the question whether a unilateral behaviour by the State binds it in a given situation depends on the circumstances of the case,*

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\* Text adopted by the Commission at its fifty-eighth session, in 2006, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the guiding principles, appears in *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10)*.

*Noting also that* in practice, it is often difficult to establish whether the legal effects stemming from the unilateral behaviour of a State are the consequence of the intent that it has expressed or depend on the expectations that its conduct has raised among other subjects of international law,

*Adopts* the following Guiding Principles which relate only to unilateral acts *stricto sensu*, i.e. those taking the form of formal declarations formulated by a State with the intent to produce obligations under international law,

1. Declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations. When the conditions for this are met, the binding character of such declarations is based on good faith; States concerned may then take them into consideration and rely on them; such States are entitled to require that such obligations be respected;

2. Any State possesses capacity to undertake legal obligations through unilateral declarations;

3. To determine the legal effects of such declarations, it is necessary to take account of their content, of all the factual circumstances in which they were made, and of the reactions to which they gave rise;

4. A unilateral declaration binds the State internationally only if it is made by an authority vested with the power to do so. By virtue of their functions, heads of State, heads of Government and ministers for foreign affairs are competent to formulate such declarations. Other persons representing the State in specified areas may be authorized to bind it, through their declarations, in areas falling within their competence;

5. Unilateral declarations may be formulated orally or in writing;

6. Unilateral declarations may be addressed to the international community as a whole, to one or several States or to other entities;

7. A unilateral declaration entails obligations for the formulating State only if it is stated in clear and specific terms. In the case of doubt as to the scope of the obligations resulting from such a declaration, such obligations must be interpreted in a restrictive manner. In interpreting the content of such obligations, weight shall be given first and foremost to the text of the declaration, together with the context and the circumstances in which it was formulated;

8. A unilateral declaration which is in conflict with a peremptory norm of general international law is void;

9. No obligation may result for other States from the unilateral declaration of a State. However, the other State or States concerned may incur obligations in relation to such a unilateral declaration to the extent that they clearly accepted such a declaration;

10. A unilateral declaration that has created legal obligations for the State making the declaration cannot be revoked arbitrarily. In assessing whether a revocation would be arbitrary, consideration should be given to:

- (i) any specific terms of the declaration relating to revocation;
- (ii) the extent to which those to whom the obligations are owed have relied on such obligations;
- (iii) the extent to which there has been a fundamental change in the circumstances.

15. CONCLUSIONS OF THE WORK OF THE STUDY GROUP ON THE  
FRAGMENTATION OF INTERNATIONAL LAW: DIFFICULTIES ARISING  
FROM THE DIVERSIFICATION AND EXPANSION  
OF INTERNATIONAL LAW\*

1. *General*

(1) *International law as a legal system.* International law is a legal system. Its rules and principles (i.e. its norms) act in relation to and should be interpreted against the background of other rules and principles. As a legal system, international law is not a random collection of such norms. There are meaningful relationships between them. Norms may thus exist at higher and lower hierarchical levels, their formulation may involve greater or lesser generality and specificity and their validity may date back to earlier or later moments in time.

(2) In applying international law, it is often necessary to determine the precise relationship between two or more rules and principles that are both valid and applicable in respect of a situation.<sup>1</sup> For that purpose the relevant relationships fall into two general types:

– *Relationships of interpretation.* This is the case where one norm assists in the interpretation of another. A norm may assist in the interpretation of another norm for example as an application, clarification,

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\* The Commission took note of the conclusions (which were to be read together with an analytical study, finalized by the chairman of the Study Group, contained in document A/CN.4/L.682 and Corr.1) at its fifty-eighth session, in 2006, and submitted them to the General Assembly as a part of the Commission's report covering the work of that session. The report appears in *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10, para. 251).

<sup>1</sup> That two norms are *valid* in regard to a situation means that they each cover the facts of which the situation consists. That two norms are *applicable* in a situation means that they have binding force in respect to the legal subjects finding themselves in the relevant situation.

updating, or modification of the latter. In such situation, both norms are applied in conjunction.

– *Relationships of conflict.* This is the case where two norms that are both valid and applicable point to incompatible decisions so that a choice must be made between them. The basic rules concerning the resolution of normative conflicts are to be found in the VCLT.

(3) *The VCLT.* When seeking to determine the relationship of two or more norms to each other, the norms should be interpreted in accordance with or analogously to the VCLT and especially the provisions in its articles 31–33 having to do with the interpretation of treaties.

(4) *The principle of harmonization.* It is a generally accepted principle that when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations.

## 2. *The maxim lex specialis derogat legi generali*

(5) *General principle.* The maxim *lex specialis derogat legi generali* is a generally accepted technique of interpretation and conflict resolution in international law. It suggests that whenever two or more norms deal with the same subject matter, priority should be given to the norm that is more specific. The principle may be applicable in several contexts: between provisions within a single treaty, between provisions within two or more treaties, between a treaty and a non-treaty standard, as well as between two non-treaty standards.<sup>2</sup> The source of the norm (whether treaty, custom or general principle of law) is not decisive for the determination of the

<sup>2</sup> For application in relation to provisions within a single treaty, see *Beagle Channel Arbitration* (*Argentina v. Chile*) ILR vol. 52 (1979) p. 141, paras. 36, 38 and 39; Case C-96/00, *Rudolf Gabriel*, Judgment of 11 July 2002, ECR (2002) I-06367, pp. 6398–6399, paras. 35–36 and p. 6404, para. 59; *Brannigan and McBride v. the United Kingdom*, Judgment of 28 May 1993, ECHR Series A (1993) No. 258, p. 57, para. 76; *De Jong, Baljet and van den Brink v. the Netherlands*, Judgment of 22 May 1984, ECHR Series A (1984) No. 77, p. 27, para. 60; *Murray v. the United Kingdom*, Judgment of 28 October 1994, ECHR Series A (1994) No. 300, p. 37; para. 98 and *Nikolova v. Bulgaria*, Judgment of 25 March 1999, ECHR 1999-II, p. 25, para. 69. For application between different instruments, see *Mavrommatis Palestine Concessions case*, P.C.I.J. Series A, No. 2 (1924) p. 31. For application between a treaty and non-treaty standards, *INA Corporation v. Government of the Islamic Republic of Iran*, Iran-US C.T.R. vol. 8, 1985-I, p. 378. For application between particular and general custom, see *Case concerning the Right of Passage over Indian Territory* (*Portugal v. India*) (*Merits*) I.C.J. Reports 1960, p. 6 at p. 44. The Court said: “Where therefore the Court finds a practice clearly established between two States which was accepted by the Parties as governing the relations between them, the Court must attribute decisive effect to that practice for the purpose of determining their specific rights and obligations. Such a particular practice must prevail over any general rules.”

more specific standard. However, in practice treaties often act as *lex specialis* by reference to the relevant customary law and general principles.<sup>3</sup>

(6) *Contextual appreciation.* The relationship between the *lex specialis* maxim and other norms of interpretation or conflict solution cannot be determined in a general way. Which consideration should be predominant—i.e. whether it is the speciality or the time of emergence of the norm—should be decided contextually.

(7) *Rationale of the principle.* That special law has priority over general law is justified by the fact that such special law, being more concrete, often takes better account of the particular features of the context in which it is to be applied than any applicable general law. Its application may also often create a more equitable result and it may often better reflect the intent of the legal subjects.

(8) *Functions of lex specialis.* Most of international law is dispositive. This means that special law may be used to apply, clarify, update or modify as well as set aside general law.

(9) *The effect of lex specialis on general law.* The application of the special law does not normally extinguish the relevant general law.<sup>4</sup> That general law will remain valid and applicable and will, in accordance with the principle of harmonization under conclusion (4) above, continue to give direction for the interpretation and application of the relevant special law and will become fully applicable in situations not provided for by the latter.<sup>5</sup>

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<sup>3</sup> In *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Merits)* I.C.J. Reports 1986, p. 14 at p. 137, para. 274, the Court said: “In general, treaty rules being *lex specialis*, it would not be appropriate that a State should bring a claim based on a customary-law rule if it has by treaty already provided means for settlement of a such a claim.”

<sup>4</sup> Thus, in the Nicaragua case, *ibid.* p. 14 at p. 95 para. 179 the Court noted: “It will . . . be clear that customary international law continues to exist and to apply, separately from international treaty law, even where the two categories of law have an identical content.”

<sup>5</sup> In the *Legality of the Threat or Use of Nuclear Weapons. Advisory opinion*, I.C.J. Reports 1996, p. 240, para. 25, the Court described the relationship between human rights law and the laws of armed conflict in the following way: “. . . the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of article 4 of the Covenant . . . The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.”

(10) *Particular types of general law.* Certain types of general law<sup>6</sup> may not, however, be derogated from by special law. *Jus cogens* is expressly non-derogable as set out in conclusions (32), (33), (40) and (41), below.<sup>7</sup> Moreover, there are other considerations that may provide a reason for concluding that a general law would prevail in which case the *lex specialis* presumption may not apply. These include the following:

- whether such prevalence may be inferred from the form or the nature of the general law or intent of the parties, wherever applicable;
- whether the application of the special law might frustrate the *purpose* of the general law;
- whether third party beneficiaries may be negatively affected by the special law; and
- whether the balance of rights and obligations, established in the general law would be negatively affected by the special law.

### 3. *Special (self-contained) regimes*

(11) *Special (“self-contained”) regimes as lex specialis.* A group of rules and principles concerned with a particular subject matter may form a special regime (“Self-contained regime”) and be applicable as *lex specialis*. Such special regimes often have their own institutions to administer the relevant rules.

(12) Three types of special regime may be distinguished:

- sometimes violation of a particular group of (primary) rules is accompanied by a special set of (secondary) rules concerning breach and reactions to breach. This is the main case provided for under article 55 of the articles on Responsibility of States for internationally wrongful acts.<sup>8</sup>

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<sup>6</sup> There is no accepted definition of “general international law”. For the purposes of these conclusions, however, it is sufficient to define what is “general” by reference to its logical counterpart, namely what is “special”. In practice, lawyers are usually able to operate this distinction by reference to the context in which it appears.

<sup>7</sup> In the *Dispute Concerning Access to Information under Article 9 of the OSPAR Convention, (Ireland v. United Kingdom)* (Final Award, 2 July 2003) ILR vol. 126 (2005) p. 364, para. 84, the tribunal observed: “[e]ven then, [the OSPAR Convention] must defer to the relevant *jus cogens* with which the parties’ *lex specialis* may be inconsistent.”

<sup>8</sup> *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10)*, para. 76. In the *Case concerning the United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)* I.C.J. Reports 1980 at p. 40, para. 86, the Court said: “The rules of diplomatic law, in short, constitute a self-contained regime which, on the one hand, lays down the receiving State’s obligations regarding the facilities, privileges and immunities to be accorded to diplomatic missions and, on the other, foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving States to counter any such abuse.”

– sometimes, however, a special regime is formed by a set of special rules, including rights and obligations, relating to a special subject matter. Such rules may concern a geographical area (e.g. a treaty on the protection of a particular river) or some substantive matter (e.g. a treaty on the regulation of the uses of a particular weapon). Such a special regime may emerge on the basis of a single treaty, several treaties, or treaty and treaties plus non-treaty developments (subsequent practice or customary law).<sup>9</sup>

– finally, sometimes all the rules and principles that regulate a certain problem area are collected together so as to express a “special regime”. Expressions such as “law of the sea”, “humanitarian law”, “human rights law”, “environmental law” and “trade law”, etc. give expression to some such regimes. For interpretative purposes, such regimes may often be considered in their entirety.

(13) *Effect of the “speciality” of a regime.* The significance of a special regime often lies in the way its norms express a unified object and purpose. Thus, their interpretation and application should, to the extent possible, reflect that object and purpose.

(14) *The relationship between special regimes and general international law.* A special regime may prevail over general law under the same conditions as *lex specialis* generally (see conclusions (8) and (10) above).

(15) *The role of general law in special regimes: Gap-filling.* The scope of special laws is by definition narrower than that of general laws. It will thus frequently be the case that a matter not regulated by special law will arise in the institutions charged to administer it. In such cases, the relevant general law will apply.<sup>10</sup>

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<sup>9</sup> See *Case of the S.S. “Wimbledon,” P.C.I.J. Series A*, No. 1 (1923) pp. 23–4, noting that the provisions on the Kiel Canal in the Treaty of Versailles of 1919: “... differ on more than one point from those to which other internal navigable waterways of the [German] Empire are subjected ... the Kiel Canal is open to the war vessels and transit traffic of all nations at peace with Germany, whereas free access to the other German navigable waterways ... is limited to the Allied and Associated Powers alone ... The provisions of the Kiel Canal are therefore self-contained.”

<sup>10</sup> Thus, in *Bankovic v. Belgium and others*, Decision of 12 December 2001, Admissibility, ECHR 2001-XII, p. 351, para. 57, the European Court of Human Rights canvassed the relationship between the European Convention on Human Rights and Fundamental Freedoms and general international law as follows: “the Court recalls that the principles underlying the Convention cannot be interpreted and applied in a vacuum. The Court must also take into account any relevant rules of international law when examining questions concerning its jurisdiction and, consequently, determine State responsibility in conformity with the governing principles of international law, although it must remain mindful of the Convention’s special character as a human rights treaty. The Convention should be interpreted as far as possible in harmony with other principles of international law of which it forms part.”

(16) *The role of general law in special regimes: Failure of special regimes.* Special regimes or the institutions set up by them may fail. Failure might be inferred when the special laws have no reasonable prospect of appropriately addressing the objectives for which they were enacted. It could be manifested, for example, by the failure of the regime's institutions to fulfil the purposes allotted to them, persistent non-compliance by one or several of the parties, desuetude, withdrawal by parties instrumental for the regime, among other causes. Whether a regime has "failed" in this sense, however, would have to be assessed above all by an interpretation of its constitutional instruments. In the event of failure, the relevant general law becomes applicable.

#### 4. Article 31 (3) (c) VCLT

(17) *Systemic integration.* Article 31 (3) (c) VCLT provides one means within the framework of the VCLT, through which relationships of interpretation (referred to in conclusion (2) above) may be applied. It requires the interpreter of a treaty to take into account "any relevant rules of international law applicable in relations between the parties". The article gives expression to the objective of "systemic integration" according to which, whatever their subject matter, treaties are a creation of the international legal system and their operation is predicated upon that fact.

(18) *Interpretation as integration in the system.* Systemic integration governs all treaty interpretation, the other relevant aspects of which are set out in the other paragraphs of articles 31–32 VCLT. These paragraphs describe a process of legal reasoning, in which particular elements will have greater or less relevance depending upon the nature of the treaty provisions in the context of interpretation. In many cases, the

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Similarly in *Korea—Measures Affecting Government Procurement* (19 January 2000) WT/DS163/R, para. 7.96, the Appellate Body of the WTO noted the relationship between the WTO Covered agreements and general international law as follows: "We take note that Article 3 (2) of the DSU requires that we seek within the context of a particular dispute to clarify the existing provisions of the WTO agreements in accordance with customary international law rules of interpretation of public international law. However, the relationship of the WTO agreements to customary international law is broader than this. Customary international law applies generally to the economic relations between WTO members. Such international law applies to the extent that the WTO treaty agreements do not 'contract out' from it. To put it another way, to the extent that there is no conflict or inconsistency, or an expression in a covered WTO agreement that applies differently, we are of the view that the customary rules of international law apply to the WTO treaties and to the process of treaty formation under the WTO."members. Such international law applies to the extent that the WTO treaty agreements do not 'contract out' from it. To put it another way, to the extent that there is no conflict or inconsistency, or an expression in a covered WTO agreement that applies differently, we are of the view that the customary rules of international law apply to the WTO treaties and to the process of treaty formation under the WTO."

issue of interpretation will be capable of resolution with the framework of the treaty itself. Article 31 (3) (c) deals with the case where material sources external to the treaty are relevant in its interpretation. These may include other treaties, customary rules or general principles of law.<sup>11</sup>

(19) *Application of systemic integration.* Where a treaty functions in the context of other agreements, the objective of systemic integration will apply as a presumption with both positive and negative aspects:

(a) the parties are taken to refer to customary international law and general principles of law for all questions which the treaty does not itself resolve in express terms;<sup>12</sup>

(b) in entering into treaty obligations, the parties do not intend to act inconsistently with generally recognized principles of international law.<sup>13</sup>

Of course, if any other result is indicated by ordinary methods of treaty interpretation that should be given effect, unless the relevant principle were part of *jus cogens*.

(20) *Application of custom and general principles of law.* Customary international law and general principles of law are of particular relevance to the interpretation of a treaty under article 31 (3) (c) especially where:

(a) the treaty rule is unclear or open-textured;

(b) the terms used in the treaty have a recognized meaning in customary international law or under general principles of law;

(c) the treaty is silent on the applicable law and it is necessary for the interpreter, applying the presumption in conclusion (19) (a) above, to look for rules developed in another part of international law to resolve the point.

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<sup>11</sup> In the *Oil Platforms* case (*Iran v. United States of America*) (*Merits*) *I.C.J. Reports 2003*, at para. 41, the Court spoke of the relations between a bilateral treaty and general international law by reference to article 31 (3) (c) as follows: "Moreover, under the general rules of treaty interpretation, as reflected in the 1969 Vienna Convention on the Law of Treaties, interpretation must take into account 'any relevant rules of international law applicable in the relations between the parties' (Article 31, paragraph 3 (c)). The Court cannot accept that Article XX, paragraph 1 (d), of the 1955 Treaty was intended to operate wholly independently of the relevant rules of international law . . . The application of the relevant rules of international law relating to this question thus forms an integral part of the task of interpretation entrusted to the Court by . . . the 1955 Treaty."

<sup>12</sup> *Georges Pinson* case (*France v. United Mexican States*) Award of 13 April 1928, UNRIAA, vol. V, p. 422. It was noted that parties are taken to refer to general principles of international law for questions which the treaty does not itself resolve in express terms or in a different way.

<sup>13</sup> In the *Case concerning the Right of Passage over Indian Territory (Portugal v. India)* (*Preliminary Objections*) *I.C.J. Reports 1957*, p. 125 at p. 142, the Court stated: "It is a rule of interpretation that a text emanating from a government must, in principle, be interpreted as producing and as intended to produce effects in accordance with existing law and not in violation of it."

(21) *Application of other treaty rules.* Article 31 (3) (c) also requires the interpreter to consider other treaty-based rules so as to arrive at a consistent meaning. Such other rules are of particular relevance where parties to the treaty under interpretation are also parties to the other treaty, where the treaty rule has passed into or expresses customary international law or where they provide evidence of the common understanding of the parties as to the object and purpose of the treaty under interpretation or as to the meaning of a particular term.

(22) *Inter-temporality.* International law is a dynamic legal system. A treaty may convey whether in applying article 31 (3) (c) the interpreter should refer only to rules of international law in force at the time of the conclusion of the treaty or may also take into account subsequent changes in the law. Moreover, the meaning of a treaty provision may also be affected by subsequent developments, especially where there are subsequent developments in customary law and general principles of law.<sup>14</sup>

(23) *Open or evolving concepts.* Rules of international law subsequent to the treaty to be interpreted may be taken into account especially where the concepts used in the treaty are open or evolving. This is the case, in particular, where: (a) the concept is one which implies taking into account subsequent technical, economic or legal developments;<sup>15</sup> (b) the concept sets up an obligation for further progressive

<sup>14</sup> The traditional rule was stated by Judge Huber in the *Island of Palmas* case (*the Netherlands v. United States of America*) Award of 4 April 1928, UNRIAA, vol. II, p. 829, at p. 845, in the context of territorial claims: “... a juridical fact must be appreciated in the light of the law contemporary with it, and not the law in force at the time when a dispute in regard to it arises or fails to be settled ... The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words, its continued manifestations, shall follow the conditions required by the evolution of law.”

<sup>15</sup> In the *Case concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)* I.C.J. Reports 1997, p. 7 at pp. 67–68, para. 112, the Court observed: “By inserting these evolving provisions in the Treaty, the parties recognized the potential necessity to adapt the Project. Consequently, the Treaty is not static, and is open to adapt to emerging norms of international law. By means of articles 15 and 19, new environmental norms can be incorporated in the Joint Contractual Plan.”

In the Arbitration regarding the Iron Rhine (*IJZEREN RIJN*) Railway (*Belgium v. Netherlands*) of 24 May 2005, a conceptual or generic term was not in issue but a new technical development relating to the operation and capacity of a railway. Evolutive interpretation was used to ensure the effective application of the treaty in terms of its object and purpose. The Tribunal observed in paragraphs 82 and 83: “The object and purpose of the 1839 Treaty of Separation was to resolve the many difficult problems complicating a stable separation of Belgium and the Netherlands: that of Article XII was to provide for transport links from Belgium to Germany, across a route designated by the 1842 Boundary Treaty. This object was not for a fixed duration and its purpose was ‘commercial communication.’ It necessarily follows, even in the absence of specific wording, that such works, going beyond restoration to previous functionality, as might from time to time be necessary or desirable for contemporary commerciality, would remain a concomitant of

development for the parties; or (c) the concept has a very general nature or is expressed in such general terms that it must take into account changing circumstances.<sup>16</sup>

### 5. *Conflicts between successive norms*

(24) *Lex posterior derogat legi priori.* According to article 30 VCLT, when all the parties to a treaty are also parties to an earlier treaty on the same subject, and the earlier treaty is not suspended or terminated, then it applies only to the extent its provisions are compatible with those of the later treaty. This is an expression of the principle according to which “later law supersedes earlier law”.

(25) *Limits of the “lex posterior” principle.* The applicability of the *lex posterior* principle is, however, limited. It cannot, for example, be automatically extended to the case where the parties to the subsequent treaty are not identical to the parties of the earlier treaty. In such cases, as provided in article 30 (4) VCLT, the State that is party to two incompatible treaties is bound *vis-à-vis* both of its treaty parties separately. In case it cannot fulfil its obligations under both treaties, it risks being responsible for the breach of one of them unless the concerned parties agree otherwise. In such case, also article 60 VCLT may become applicable. The question which of the incompatible treaties should be

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the right of transit that Belgium would be able to request. That being so, the entirety of Article XIII, with its careful balance of the rights and obligations of the Parties, remains in principle applicable to the adaptation and modernisation requested by Belgium,” Text of award available on <<http://www.pca-cpa.org>>. (last visited on 14 July 2006).

<sup>16</sup> See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16 at p. 31, para. 53. The Court said that the concept of “sacred trust” was by definition evolutionary. “The parties to the Covenant must consequently be deemed to have accepted [it] as such. That it is why, viewing the institutions of 1919, the Court must take into consideration the changes which have occurred in the supervening half a century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary international law. Moreover, an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of interpretation.”

In the *Case concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)* *I.C.J. Reports 1997*, pp. 76–80, paras. 132–147, the ICJ noted that: “[T]he Court wishes to point out that newly developed norms of environmental law are relevant for the implementation of the Treaty and that the parties could, by agreement, incorporate them . . . [in] . . . the Treaty. These articles do not contain specific obligations of performance but require the parties, in carrying out their obligations to ensure that the quality of water in the Danube is not impaired and that nature is protected, to take new environmental norms into consideration when agreeing upon the means to be specified in the Joint Contractual Plan . . .”.

implemented and the breach of which should attract State responsibility cannot be answered by a general rule.<sup>17</sup> Conclusions (26)-(27) below lay out considerations that might then be taken into account.

(26) *The distinction between treaty provisions that belong to the same “regime” and provisions in different “regimes”*. The *lex posterior* principle is at its strongest in regard to conflicting or overlapping provisions that are part of treaties that are institutionally linked or otherwise intended to advance similar objectives (i.e. form part of the same regime). In case of conflicts or overlaps between treaties in different regimes, the question of which of them is later in time would not necessarily express any presumption of priority between them. Instead, States bound by the treaty obligations should try to implement them as far as possible with the view of mutual accommodation and in accordance with the principle of harmonization. However, the substantive rights of treaty parties or third party beneficiaries should not be undermined.

(27) *Particular types of treaties or treaty provisions*. The *lex posterior* presumption may not apply where the parties have intended otherwise, which may be inferred from the nature of the provisions or the relevant instruments, or from their object and purpose. The limitations that apply in respect of the *lex specialis* presumption in conclusion (10) may also be relevant with respect to the *lex posterior*.

(28) *Settlement of disputes within and across regimes*. Disputes between States involving conflicting treaty provisions should be normally resolved by negotiation between parties to the relevant treaties. However, when no negotiated solution is available, recourse ought to be had, where appropriate, to other available means of dispute settlement. When the conflict concerns provisions within a single regime (as defined in conclusion (26) above), then its resolution may be appropriate in the regime-specific mechanism. However, when the conflict concerns provisions in treaties that are not part of the same regime, special attention should be given to the independence of the means of settlement chosen.

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<sup>17</sup> There is not much case-law on conflicts between successive norms. However, the situation of a treaty conflict arose in *Slivenko and others v. Latvia* (Decision as to the admissibility of 23 January 2002) ECHR 2002-II, pp. 482-483, paras. 60–61, in which the European Court of Human Rights held that a prior bilateral treaty between Latvia and Russia could not be invoked to limit the application of the European Convention on Human Rights and Fundamental Freedoms: “It follows from the text of Article 57 (1) of the [European Convention on Human Rights], read in conjunction with Article 1, that ratification of the Convention by a State presupposes that any law then in force in its territory should be in conformity with the Convention . . . In the Court’s opinion, the same principles must apply as regards any provisions of international treaties which a Contracting State has concluded prior to the ratification of the Convention and which might be at variance with certain of its provisions.”

(29) *Inter se agreements.* The case of agreements to modify multi-lateral treaties by certain of the parties only (*inter se* agreements) is covered by article 41 VCLT. Such agreements are an often used technique for the more effective implementation of the original treaty between a limited number of treaty parties that are willing to take more effective or more far-reaching measures for the realization of the object and purpose of the original treaty. *Inter se* agreements may be concluded if this is provided for by the original treaty or it is not specifically prohibited and the agreement: “(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; (ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole” (article 41 (1) (b) VCLT).

(30) *Conflict clauses.* When States enter into a treaty that might conflict with other treaties, they should aim to settle the relationship between such treaties by adopting appropriate conflict clauses. When adopting such clauses, it should be borne in mind that:

- (a) they may not affect the rights of third parties;
- (b) they should be as clear and specific as possible. In particular, they should be directed to specific provisions of the treaty and they should not undermine the object and purpose of the treaty;
- (c) they should, as appropriate, be linked with means of dispute settlement.

#### 6. *Hierarchy in international law: Jus cogens, Obligations erga omnes, Article 103 of the Charter of the United Nations*

(31) *Hierarchical relations between norms of international law.* The main sources of international law (treaties, custom, general principles of law as laid out in Article 38 of the Statute of the International Court of Justice) are not in a hierarchical relationship *inter se*.<sup>18</sup> Drawing analogies from the hierarchical nature of domestic legal system is not generally appropriate owing to the differences between the two systems. Nevertheless, some rules of international law are more important than other rules and for this reason enjoy a superior position or special status in the international legal system. This is sometimes expressed by the designation of some norms as “fundamental” or as expressive of “elementary considerations of humanity”<sup>19</sup> “intransmissible principles of international law”.<sup>20</sup>

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<sup>18</sup> In addition, Article 38 (d) mentions “judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”

<sup>19</sup> *Corfu Channel case (United Kingdom v. Albania)* I.C.J. Reports 1949, p. 22.

<sup>20</sup> *Legality of the Threat or Use of Nuclear Weapons case*, Advisory Opinion, I.C.J. Reports 1996, para. 79.

What effect such designations may have is usually determined by the relevant context or instrument in which that designation appears.

(32) *Recognized hierarchical relations by the substance of the rules: Jus cogens.* A rule of international law may be superior to other rules on account of the importance of its content as well as the universal acceptance of its superiority. This is the case of peremptory norms of international law (*jus cogens*, Article 53 VCLT), that is, norms “accepted and recognized by the international community of States as a whole from which no derogation is permitted”.<sup>21</sup>

(33) *The content of jus cogens.* The most frequently cited examples of *jus cogens* norms are the prohibition of aggression, slavery and the slave trade, genocide, racial discrimination, apartheid and torture, as well as basic rules of international humanitarian law applicable in armed conflict, and the right to self-determination.<sup>22</sup> Also other rules may have a *jus cogens* character inasmuch as they are accepted and recognized by the international community of States as a whole as norms from which no derogation is permitted.

(34) *Recognized hierarchical relations by virtue of a treaty provision: Article 103 of the Charter of the United Nations.* A rule of international law may also be superior to other rules by virtue of a treaty provision. This is the case of Article 103 of the United Nations Charter by virtue of which “In the event of a conflict between the obligations of the Members of the United Nations under the . . . Charter and their obligations under any other international agreement, their obligations under the . . . Charter shall prevail.”

(35) *The scope of Article 103 of the Charter.* The scope of Article 103 extends not only to the Articles of the Charter but also to binding decisions made by United Nations organs such as the Security Council.<sup>23</sup>

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<sup>21</sup> Article 53 VCLT: A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

<sup>22</sup> *Official Records of the General Assembly, Fifty-sixth Session, Supplement 10* (A/56/10), commentary to article 40 of the draft articles on State Responsibility, paras. (4)-(6). See also commentary to article 26, para. (5). See also *Case concerning armed activities on the territory of the Congo (Democratic Republic of the Congo v. Rwanda)* I.C.J. Reports 2006, para. 64.

<sup>23</sup> *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America) (Provisional Measures)* I.C.J. Reports 1998, para. 42 and *Case concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. the United Kingdom) (Provisional Measures)* I.C.J. Reports 1992, paras. 39–40.

Given the character of some Charter provisions, the constitutional character of the Charter and the established practice of States and United Nations organs, Charter obligations may also prevail over inconsistent customary international law.

(36) *The status of the United Nations Charter.* It is also recognized that the United Nations Charter itself enjoys special character owing to the fundamental nature of some of its norms, particularly its principles and purposes and its universal acceptance.<sup>24</sup>

(37) *Rules specifying obligations owed to the international community as a whole: Obligations erga omnes.* Some obligations enjoy a special status owing to the universal scope of their applicability. This is the case of obligations *erga omnes*, that is obligations of a State towards the international community as a whole. These rules concern all States and all States can be held to have a legal interest in the protection of the rights involved.<sup>25</sup> Every State may invoke the responsibility of the State violating such obligations.<sup>26</sup>

(38) *The relationship between jus cogens norms and obligations erga omnes.* It is recognized that while all obligations established by *jus cogens* norms, as referred to in conclusion (33) above, also have the character of *erga omnes* obligations, the reverse is not necessarily true.<sup>27</sup> Not all *erga omnes* obligations are established by peremptory norms of general inter-

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<sup>24</sup> See Article 2 (6) of the Charter of the United Nations.

<sup>25</sup> In the words of the International Court of Justice: “... an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising *vis-à-vis* another State in the field of diplomatic protection. By their very nature, the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*. *Case concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (Second Phase)* I.C.J. Reports 1970, p. 3 at p. 32, para. 33. Or, in accordance with the definition, by the Institut de droit international, an obligation *erga omnes* is “[a]n obligation under general international law that a State owes in any given case to the international community, in view of its common values and its concern for compliance, so that a breach of that obligation enables all States to take action.” Institut de droit international, “Obligations and Rights *Erga Omnes* in International Law,” Krakow Session, *Annuaire de l’Institut de droit international* (2005), article 1.

<sup>26</sup> *Official Records of the General Assembly, Fifty-sixth Session, Supplement 10* (A/56/10), articles on Responsibility of States for internationally wrongful acts, article 48 (1) (b). This would include common article 1 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; the Geneva Convention relative to the Treatment of Prisoners of War, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, all of 12 August 1949.

<sup>27</sup> According to the International Court of Justice “Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of

national law. This is the case, for example, of certain obligations under “the principles and rules concerning the basic rights of the human person”,<sup>28</sup> as well as of some obligations relating to the global commons.<sup>29</sup>

(39) *Different approaches to the concept of obligations erga omnes.* The concept of *erga omnes* obligations has also been used to refer to treaty obligations that a State owes to all other States parties (obligations *erga omnes partes*)<sup>30</sup> or to non-party States as third party beneficiaries. In addition, issues of territorial status have frequently been addressed in *erga omnes* terms, referring to their opposability to all States.<sup>31</sup> Thus, boundary and territorial treaties have been stated to “represent[] a legal

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the corresponding rights of protection have entered into the body of general international law . . . others are conferred by international instruments of a universal or quasi-universal character.” *Case concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (Second Phase)* I.C.J. Reports 1970, p. 3 at p. 32, para. 34. See also *Case concerning East Timor (Portugal v. Australia)* I.C.J. Reports 1995, p. 90 at p. 102, para. 29. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Advisory Opinion*, I.C.J. Reports 2004, paras. 155 and 159 (including as *erga omnes* obligations “certain . . . obligations under international humanitarian law” as well as the right of self-determination). For the prohibition of genocide as an *erga omnes* obligation, see *Case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment*, I.C.J. Reports 1996, p. 595 at para. 31, and *Case concerning armed activities on the territory of the Congo (Democratic Republic of the Congo/Rwanda)* I.C.J. Reports 2006, at para. 64. In the Furundzija case, the prohibition of torture was defined as both a peremptory norm and an obligation *erga omnes*, see *Prosecutor v. Anto Furundzija*, Judgment of 10 December 1998, Case No. IT-95-17/1, Trial Chamber II, ILR, vol. 121 (2002), p. 260, para. 151.

<sup>28</sup> *Barcelona Traction case, ibid.*

<sup>29</sup> The obligations are illustrated by article 1 of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, United Nations, *Treaty Series*, vol. 610, p. 205 and article 136 of the United Nations Convention on the Law of the Sea, United Nations, *Treaty Series*, vol. 1834, p. 396

<sup>30</sup> Institut de droit international, “Obligations *Erga Omnes* in International Law,” Krakow Session, *Annuaire de l’Institut de droit international* (2005), article 1 (b).

<sup>31</sup> In my view, when a title to an area of maritime jurisdiction exists—be it to a continental shelf or (*arguedo*) to a fishery zone—it exists *erga omnes*, i.e. is opposable to all States under international law,” Separate Opinion of Judge Oda, *Case concerning maritime delimitation in the area between Greenland and Jan Mayen (Denmark v. Norway)* Judgment, I.C.J. Reports 1993, p. 38 at p. 100, para. 40. See likewise, Separate Opinion by Judge De Castro, in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 16 at p. 165: “ . . . a legal status—like the *iura in re* with which it is sometimes confused—is effective *inter omnes* and *erga omnes*.” See also Dissenting Opinion by Judge Skubiszewski, in *Case concerning East Timor (Portugal v. Australia)* I.C.J. Reports 1995, p. 90 at p. 248, paras. 78–79.

reality which necessarily impinges upon third States, because they have effect *erga omnes*.<sup>32</sup>

(40) *The relationship between jus cogens and the obligations under the United Nations Charter.* The United Nations Charter has been universally accepted by States and thus a conflict between *jus cogens* norms and Charter obligations is difficult to contemplate. In any case, according to Article 24 (2) of the Charter, the Security Council shall act in accordance with the Purposes and Principles of the United Nations which include norms that have been subsequently treated as *jus cogens*.

(41) *The operation and effect of jus cogens norms and Article 103 of the Charter:*

(a) a rule conflicting with a norm of *jus cogens* becomes thereby *ipso facto* void;

(b) a rule conflicting with Article 103 of the United Nations Charter becomes inapplicable as a result of such conflict and to the extent of such conflict.

(42) *Hierarchy and the principle of harmonization.* Conflicts between rules of international law should be resolved in accordance with the principle of harmonization, as laid out in conclusion (4) above. In the case of conflict between one of the hierarchically superior norms referred to in this section and another norm of international law, the latter should, to the extent possible, be interpreted in a manner consistent with the former. In case this is not possible, the superior norm will prevail.

## 16. ARTICLES ON THE LAW OF TRANSBOUNDARY AQUIFERS\*

...

*Conscious of the importance for humankind of life supporting groundwater resources in all regions of the world,*

*Bearing in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,*

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<sup>32</sup> *Government of the State of Eritrea v. the Government of the Republic of Yemen (Phase one: Territorial sovereignty and scope of the dispute)*, Arbitration Tribunal, 9 October 1998, ILR, vol. 114 (1999), p. 1 at p. 48, para. 153.

\* Text adopted by the Commission at its sixtieth session, in 2008, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles as adopted by the Commission, appears in *Official Records of the General Assembly, Sixty-sixth session, Supplement No. 10* (A/63/10). Text reproduced as it appears in the annex to General Assembly resolution 63/124 of 11 December 2008.

*Recalling General Assembly resolution 1803 (XVII) of 14 December 1962 on permanent sovereignty over natural resources,*

*Reaffirming the principles and recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration on Environment and Development and Agenda 21,*

*Taking into account increasing demands for freshwater and the need to protect groundwater resources,*

*Mindful of the particular problems posed by the vulnerability of aquifers to pollution,*

*Convinced of the need to ensure the development, utilization, conservation, management and protection of groundwater resources in the context of the promotion of the optimal and sustainable development of water resources for present and future generations,*

*Affirming the importance of international cooperation and good neighbourliness in this field,*

*Emphasizing the need to take into account the special situation of developing countries,*

*Recognizing the necessity to promote international cooperation,*

...

## PART ONE. INTRODUCTION

### *Article 1. Scope*

The present articles apply to:

- (a) utilization of transboundary aquifers or aquifer systems;
- (b) other activities that have or are likely to have an impact upon such aquifers or aquifer systems; and
- (c) measures for the protection, preservation and management of such aquifers or aquifer systems.

### *Article 2. Use of terms*

For the purposes of the present articles:

- (a) “aquifer” means a permeable water-bearing geological formation underlain by a less permeable layer and the water contained in the saturated zone of the formation;
- (b) “aquifer system” means a series of two or more aquifers that are hydraulically connected;

(c) "transboundary aquifer" or "transboundary aquifer system" means respectively, an aquifer or aquifer system, parts of which are situated in different States;

(d) "aquifer State" means a State in whose territory any part of a transboundary aquifer or aquifer system is situated;

(e) "utilization of transboundary aquifers or aquifer systems" includes extraction of water, heat and minerals, and storage and disposal of any substance;

(f) "recharging aquifer" means an aquifer that receives a non-negligible amount of contemporary water recharge;

(g) "recharge zone" means the zone which contributes water to an aquifer, consisting of the catchment area of rainfall water and the area where such water flows to an aquifer by runoff on the ground and infiltration through soil;

(h) "discharge zone" means the zone where water originating from an aquifer flows to its outlets, such as a watercourse, a lake, an oasis, a wetland or an ocean.

## PART TWO. GENERAL PRINCIPLES

### *Article 3. Sovereignty of aquifer States*

Each aquifer State has sovereignty over the portion of a transboundary aquifer or aquifer system located within its territory. It shall exercise its sovereignty in accordance with international law and the present articles.

### *Article 4. Equitable and reasonable utilization*

Aquifer States shall utilize transboundary aquifers or aquifer systems according to the principle of equitable and reasonable utilization, as follows:

(a) they shall utilize transboundary aquifers or aquifer systems in a manner that is consistent with the equitable and reasonable accrual of benefits therefrom to the aquifer States concerned;

(b) they shall aim at maximizing the long-term benefits derived from the use of water contained therein;

(c) they shall establish individually or jointly a comprehensive utilization plan, taking into account present and future needs of, and alternative water sources for, the aquifer States; and

(d) they shall not utilize a recharging transboundary aquifer or aquifer system at a level that would prevent continuance of its effective functioning.

*Article 5. Factors relevant to equitable and reasonable utilization*

1. Utilization of a transboundary aquifer or aquifer system in an equitable and reasonable manner within the meaning of article 4 requires taking into account all relevant factors, including:

- (a) the population dependent on the aquifer or aquifer system in each aquifer State;
- (b) the social, economic and other needs, present and future, of the aquifer States concerned;
- (c) the natural characteristics of the aquifer or aquifer system;
- (d) the contribution to the formation and recharge of the aquifer or aquifer system;
- (e) the existing and potential utilization of the aquifer or aquifer system;
- (f) the actual and potential effects of the utilization of the aquifer or aquifer system in one aquifer State on other aquifer States concerned;
- (g) the availability of alternatives to a particular existing and planned utilization of the aquifer or aquifer system;
- (h) the development, protection and conservation of the aquifer or aquifer system and the costs of measures to be taken to that effect;
- (i) the role of the aquifer or aquifer system in the related ecosystem.

2. The weight to be given to each factor is to be determined by its importance with regard to a specific transboundary aquifer or aquifer system in comparison with that of other relevant factors. In determining what is equitable and reasonable utilization, all relevant factors are to be considered together and a conclusion reached on the basis of all the factors. However, in weighing different kinds of utilization of a transboundary aquifer or aquifer system, special regard shall be given to vital human needs.

*Article 6. Obligation not to cause significant harm*

1. Aquifer States shall, in utilizing transboundary aquifers or aquifer systems in their territories, take all appropriate measures to prevent the causing of significant harm to other aquifer States or other States in whose territory a discharge zone is located.

2. Aquifer States shall, in undertaking activities other than utilization of a transboundary aquifer or aquifer system that have, or are likely to have, an impact upon that transboundary aquifer or aquifer system, take all appropriate measures to prevent the causing of signifi-

cant harm through that aquifer or aquifer system to other aquifer States or other States in whose territory a discharge zone is located.

3. Where significant harm nevertheless is caused to another aquifer State or a State in whose territory a discharge zone is located, the aquifer State whose activities cause such harm shall take, in consultation with the affected State, all appropriate response measures to eliminate or mitigate such harm, having due regard for the provisions of articles 4 and 5.

*Article 7. General obligation to cooperate*

1. Aquifer States shall cooperate on the basis of sovereign equality, territorial integrity, sustainable development, mutual benefit and good faith in order to attain equitable and reasonable utilization and appropriate protection of their transboundary aquifers or aquifer systems.

2. For the purpose of paragraph 1, aquifer States should establish joint mechanisms of cooperation.

*Article 8. Regular exchange of data and information*

1. Pursuant to article 7, aquifer States shall, on a regular basis, exchange readily available data and information on the condition of their transboundary aquifers or aquifer systems, in particular of a geological, hydrogeological, hydrological, meteorological and ecological nature and related to the hydrochemistry of the aquifers or aquifer systems, as well as related forecasts.

2. Where knowledge about the nature and extent of a transboundary aquifer or aquifer system is inadequate, aquifer States concerned shall employ their best efforts to collect and generate more complete data and information relating to such aquifer or aquifer system, taking into account current practices and standards. They shall take such action individually or jointly and, where appropriate, together with or through international organizations.

3. If an aquifer State is requested by another aquifer State to provide data and information relating to an aquifer or aquifer system that are not readily available, it shall employ its best efforts to comply with the request. The requested State may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.

4. Aquifer States shall, where appropriate, employ their best efforts to collect and process data and information in a manner that facilitates their utilization by the other aquifer States to which such data and information are communicated.

*Article 9. Bilateral and regional agreements and arrangements*

For the purpose of managing a particular transboundary aquifer or aquifer system, aquifer States are encouraged to enter into bilateral or regional agreements or arrangements among themselves. Such agreements or arrangements may be entered into with respect to an entire aquifer or aquifer system or any part thereof or a particular project, programme or utilization except insofar as an agreement or arrangement adversely affects, to a significant extent, the utilization by one or more other aquifer States of the water in that aquifer or aquifer system, without their express consent.

**PART THREE. PROTECTION, PRESERVATION AND MANAGEMENT***Article 10. Protection and preservation of ecosystems*

Aquifer States shall take all appropriate measures to protect and preserve ecosystems within, or dependent upon, their transboundary aquifers or aquifer systems, including measures to ensure that the quality and quantity of water retained in an aquifer or aquifer system, as well as that released through its discharge zones, are sufficient to protect and preserve such ecosystems.

*Article 11. Recharge and discharge zones*

1. Aquifer States shall identify the recharge and discharge zones of transboundary aquifers or aquifer systems that exist within their territory. They shall take appropriate measures to prevent and minimize detrimental impacts on the recharge and discharge processes.

2. All States in whose territory a recharge or discharge zone is located, in whole or in part, and which are not aquifer States with regard to that aquifer or aquifer system, shall cooperate with the aquifer States to protect the aquifer or aquifer system and related ecosystems.

*Article 12. Prevention, reduction and control of pollution*

Aquifer States shall, individually and, where appropriate, jointly, prevent, reduce and control pollution of their transboundary aquifers or aquifer systems, including through the recharge process, that may cause significant harm to other aquifer States. Aquifer States shall take a precautionary approach in view of uncertainty about the nature and extent of a transboundary aquifer or aquifer system and of its vulnerability to pollution.

*Article 13. Monitoring*

1. Aquifer States shall monitor their transboundary aquifers or aquifer systems. They shall, wherever possible, carry out these monitoring activities jointly with other aquifer States concerned and, where appropriate, in collaboration with competent international organizations. Where monitoring activities cannot be carried out jointly, the aquifer States shall exchange the monitored data among themselves.

2. Aquifer States shall use agreed or harmonized standards and methodology for monitoring their transboundary aquifers or aquifer systems. They should identify key parameters that they will monitor based on an agreed conceptual model of the aquifers or aquifer systems. These parameters should include parameters on the condition of the aquifer or aquifer system as listed in article 8, paragraph 1, and also on the utilization of the aquifers or aquifer systems.

*Article 14. Management*

Aquifer States shall establish and implement plans for the proper management of their transboundary aquifers or aquifer systems. They shall, at the request of any of them, enter into consultations concerning the management of a transboundary aquifer or aquifer system. A joint management mechanism shall be established, wherever appropriate.

*Article 15. Planned activities*

1. When a State has reasonable grounds for believing that a particular planned activity in its territory may affect a transboundary aquifer or aquifer system and thereby may have a significant adverse effect upon another State, it shall, as far as practicable, assess the possible effects of such activity.

2. Before a State implements or permits the implementation of planned activities which may affect a transboundary aquifer or aquifer system and thereby may have a significant adverse effect upon another State, it shall provide that State with timely notification thereof. Such notification shall be accompanied by available technical data and information, including any environmental impact assessment, in order to enable the notified State to evaluate the possible effects of the planned activities.

3. If the notifying and the notified States disagree on the possible effect of the planned activities, they shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation. They may utilize an independent fact-finding body to make an impartial assessment of the effect of the planned activities.

## PART FOUR. MISCELLANEOUS PROVISIONS

### *Article 16. Technical cooperation with developing States*

States shall, directly or through competent international organizations, promote scientific, educational, technical, legal and other cooperation with developing States for the protection and management of transboundary aquifers or aquifer systems, including, *inter alia*:

- (a) strengthening their capacity-building in scientific, technical and legal fields;
- (b) facilitating their participation in relevant international programmes;
- (c) supplying them with necessary equipment and facilities;
- (d) enhancing their capacity to manufacture such equipment;
- (e) providing advice on and developing facilities for research, monitoring, educational and other programmes;
- (f) providing advice on and developing facilities for minimizing the detrimental effects of major activities affecting their transboundary aquifer or aquifer system;
- (g) providing advice in the preparation of environmental impact assessments;
- (h) supporting the exchange of technical knowledge and experience among developing States with a view to strengthening cooperation among them in managing the transboundary aquifer or aquifer system.

### *Article 17. Emergency situations*

1. For the purpose of the present article, "emergency" means a situation, resulting suddenly from natural causes or from human conduct, that affects a transboundary aquifer or aquifer system and poses an imminent threat of causing serious harm to aquifer States or other States.

2. The State within whose territory the emergency originates shall:

- (a) without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of the emergency;

- (b) in cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate any harmful effect of the emergency.

3. Where an emergency poses a threat to vital human needs, aquifer States, notwithstanding articles 4 and 6, may take measures that are strictly necessary to meet such needs.

4. States shall provide scientific, technical, logistical and other cooperation to other States experiencing an emergency. Cooperation may include coordination of international emergency actions and communications, making available emergency response personnel, emergency response equipment and supplies, scientific and technical expertise and humanitarian assistance.

*Article 18. Protection in time of armed conflict*

Transboundary aquifers or aquifer systems and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

*Article 19. Data and information vital to national defence or security*

Nothing in the present articles obliges a State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with other States with a view to providing as much information as possible under the circumstances.

17. GUIDE TO PRACTICE ON RESERVATIONS TO TREATIES

TEXT OF THE GUIDELINES\*

1. Definitions

1.1 *Definition of reservations*

1. “Reservation” means a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization.

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\* Text adopted by the Commission at its sixty-third session, in 2011, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session. The report, which also contains commentaries on the guidelines, appears in *Official Records of the General Assembly, Sixty-sixth session, Supplement No. 10* (A/66/10 and Add.1).

2. Paragraph 1 is to be interpreted as including reservations which purport to exclude or to modify the legal effect of certain provisions of a treaty, or of the treaty as a whole with respect to certain specific aspects, in their application to the State or to the international organization which formulates the reservation.

*1.1.1 Statements purporting to limit the obligations of their author*

A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty, by which its author purports to limit the obligations imposed on it by the treaty, constitutes a reservation.

*1.1.2. Statements purporting to discharge an obligation by equivalent means*

A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty, by which that State or that organization purports to discharge an obligation pursuant to the treaty in a manner different from, but considered by the author of the statement to be equivalent to that imposed by the treaty, constitutes a reservation.

*1.1.3 Reservations relating to the territorial application of the treaty*

A unilateral statement by which a State purports to exclude the application of some provisions of a treaty, or of the treaty as a whole with respect to certain specific aspects, to a territory to which they would be applicable in the absence of such a statement constitutes a reservation.

*1.1.4. Reservations formulated when extending the territorial application of a treaty*

A unilateral statement by which a State, when extending the application of a treaty to a territory, purports to exclude or to modify the legal effect of certain provisions of the treaty in relation to that territory constitutes a reservation.

*1.1.5 Reservations formulated jointly*

The joint formulation of a reservation by several States or international organizations does not affect the unilateral character of that reservation.

*1.1.6. Reservations formulated by virtue of clauses expressly authorizing the exclusion or the modification of certain provisions of a treaty*

A unilateral statement made by a State or an international organization when that State or organization expresses its consent to be bound by a treaty, in accordance with a clause expressly authorizing the parties or some of them to exclude or to modify the legal effect of certain provisions of the treaty with regard to the party that has made the statement, constitutes a reservation expressly authorized by the treaty.

*1.2 Definition of interpretative declarations*

“Interpretative declaration” means a unilateral statement, however phrased or named, made by a State or an international organization, whereby that State or that organization purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions.

*1.2.1 Interpretative declarations formulated jointly*

The joint formulation of an interpretative declaration by several States or international organizations does not affect the unilateral character of that interpretative declaration.

*1.3 Distinction between reservations and interpretative declarations*

The character of a unilateral statement as a reservation or as an interpretative declaration is determined by the legal effect that its author purports to produce.

*1.3.1 Method of determining the distinction between reservations and interpretative declarations*

To determine whether a unilateral statement formulated by a State or an international organization in respect of a treaty is a reservation or an interpretative declaration, the statement should be interpreted in good faith in accordance with the ordinary meaning to be given to its terms, with a view to identifying therefrom the intention of its author, in light of the treaty to which it refers.

*1.3.2. Phrasing and name*

The phrasing or name of a unilateral statement provides an indication of the purported legal effect.

### *1.3.3 Formulation of a unilateral statement when a reservation is prohibited*

When a treaty prohibits reservations to all or certain of its provisions, a unilateral statement formulated in respect of those provisions by a State or an international organization shall be presumed not to constitute a reservation. Such a statement nevertheless constitutes a reservation if it purports to exclude or modify the legal effect of certain provisions of the treaty, or of the treaty as a whole with respect to certain specific aspects, in their application to its author.

### *1.4 Conditional interpretative declarations*

1. A conditional interpretative declaration is a unilateral statement formulated by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or international organization subjects its consent to be bound by the treaty to a specific interpretation of the treaty or of certain provisions thereof.

2. Conditional interpretative declarations are subject to the rules applicable to reservations.

### *1.5 Unilateral statements other than reservations and interpretative declarations*

Unilateral statements formulated in relation to a treaty which are not reservations nor interpretative declarations (including conditional interpretative declarations) are outside the scope of the present Guide to Practice.

#### *1.5.1 Statements of non-recognition*

A unilateral statement by which a State indicates that its participation in a treaty does not imply recognition of an entity which it does not recognize is outside the scope of the present Guide to Practice even if it purports to exclude the application of the treaty between the declaring State and the non-recognized entity.

#### *1.5.2 Statements concerning modalities of implementation of a treaty at the internal level*

A unilateral statement formulated by a State or an international organization whereby that State or that organization indicates the manner in which it intends to implement a treaty at the internal level, without affecting its rights and obligations towards the other contracting

States or contracting organizations, is outside the scope of the present Guide to Practice.

### *1.5.3 Unilateral statements made under a clause providing for options*

1. A unilateral statement made by a State or an international organization, in accordance with a clause in a treaty permitting the parties to accept an obligation that is not otherwise imposed by the treaty, or permitting them to choose between two or more provisions of the treaty, is outside the scope of the present Guide to Practice.

2. A restriction or condition contained in a statement by which a State or an international organization accepts, by virtue of a clause in a treaty, an obligation that is not otherwise imposed by the treaty does not constitute a reservation.

## *1.6 Unilateral statements in respect of bilateral treaties*

### *1.6.1 “Reservations” to bilateral treaties*

A unilateral statement, however phrased or named, formulated by a State or an international organization after initialling or signature but prior to entry into force of a bilateral treaty, by which that State or that organization purports to obtain from the other party a modification of the provisions of the treaty, does not constitute a reservation within the meaning of the present Guide to Practice.

### *1.6.2 Interpretative declarations in respect of bilateral treaties*

Guidelines 1.2 and 1.4 are applicable to interpretative declarations in respect of both multilateral and bilateral treaties.

### *1.6.3 Legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party*

The interpretation resulting from an interpretative declaration made in respect of a bilateral treaty by a State or an international organization party to the treaty and accepted by the other party constitutes an authentic interpretation of that treaty.

## *1.7 Alternatives to reservations and interpretative declarations*

### *1.7.1 Alternatives to reservations*

In order to achieve results comparable to those effected by reservations, States or international organizations may also have recourse to alternative procedures, such as:

- the insertion in the treaty of a clause purporting to limit its scope or application;
- the conclusion of an agreement, under a specific provision of a treaty, by which two or more States or international organizations purport to exclude or modify the legal effect of certain provisions of the treaty as between themselves.

### *1.7.2 Alternatives to interpretative declarations*

In order to specify or clarify the meaning or scope of a treaty or certain of its provisions, States or international organizations may also have recourse to procedures other than interpretative declarations, such as:

- the insertion in the treaty of provisions purporting to interpret the treaty;
- the conclusion of a supplementary agreement to the same end, simultaneously or subsequently to the conclusion of the treaty.

## *1.8 Scope of definitions*

The definitions of unilateral statements included in the present Part are without prejudice to the validity and legal effects of such statements under the rules applicable to them.

# *2. Procedure*

## *2.1 Form and notification of reservations*

### *2.1.1 Form of reservations*

A reservation must be formulated in writing.

### *2.1.2 Statement of reasons for reservations*

A reservation should, to the extent possible, indicate the reasons why it is being formulated.

### *2.1.3 Representation for the purpose of formulating a reservation at the international level*

1. Subject to the usual practices followed in international organizations which are depositaries of treaties, a person is considered as representing a State or an international organization for the purpose of formulating a reservation if:

- (a) that person produces appropriate full powers for the purposes of adopting or authenticating the text of the treaty with regard to which

the reservation is formulated or expressing the consent of the State or organization to be bound by the treaty; or

(b) it appears from practice or from other circumstances that it was the intention of the States and international organizations concerned to consider that person as representing the State or the international organization for such purposes without having to produce full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State for the purpose of formulating a reservation at the international level:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs;

(b) representatives accredited by States to an international conference, for the purpose of formulating a reservation to a treaty adopted at that conference;

(c) representatives accredited by States to an international organization or one of its organs, for the purpose of formulating a reservation to a treaty adopted in that organization or organ;

(d) heads of permanent missions to an international organization, for the purpose of formulating a reservation to a treaty between the accrediting States and that organization.

#### *2.1.4 Absence of consequences at the international level of the violation of internal rules regarding the formulation of reservations*

1. The competent authority and the procedure to be followed at the internal level for formulating a reservation are determined by the internal law of each State or the relevant rules of each international organization.

2. A State or an international organization may not invoke the fact that a reservation has been formulated in violation of a provision of the internal law of that State or the rules of that organization regarding competence and the procedure for formulating reservations for the purpose of invalidating the reservation.

#### *2.1.5 Communication of reservations*

1. A reservation must be communicated in writing to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty.

2. A reservation to a treaty in force which is the constituent instrument of an international organization must also be communicated to such organization.

### *2.1.6 Procedure for communication of reservations*

1. Unless otherwise provided in the treaty or agreed by the contracting States and contracting organizations, the communication of a reservation to a treaty shall be transmitted:

(i) if there is no depositary, directly by the author of the reservation to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty; or

(ii) if there is a depositary, to the latter, which shall notify the States and international organizations for which it is intended as soon as possible.

2. The communication of a reservation shall be considered as having been made with regard to a State or an international organization only upon receipt by that State or organization.

3. The communication of a reservation to a treaty by means other than a diplomatic note or depositary notification, such as electronic mail or facsimile, must be confirmed within an appropriate period of time by such a note or notification. In such case, the reservation is considered as having been formulated at the date of the initial communication.

### *2.1.7 Functions of depositaries*

1. The depositary shall examine whether a reservation to a treaty formulated by a State or an international organization is in due and proper form and, if need be, bring the matter to the attention of the State or international organization concerned.

2. In the event of any difference appearing between a State or an international organization and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of:

(a) the signatory States and organizations and the contracting States and contracting organizations; or

(b) where appropriate, the competent organ of the international organization concerned.

## *2.2 Confirmation of reservations*

### *2.2.1 Formal confirmation of reservations formulated when signing a treaty*

If formulated when signing a treaty subject to ratification, act of formal confirmation, acceptance or approval, a reservation must be formally confirmed by the reserving State or international organization

when expressing its consent to be bound by the treaty. In such a case, the reservation shall be considered as having been formulated on the date of its confirmation.

#### *2.2.2 Instances of non-requirement of confirmation of reservations formulated when signing a treaty*

A reservation formulated when signing a treaty does not require subsequent confirmation when a State or an international organization expresses by signature its consent to be bound by the treaty.

#### *2.2.3 Reservations formulated upon signature when a treaty expressly so provides*

Where the treaty expressly provides that a State or an international organization may formulate a reservation when signing the treaty, such a reservation does not require formal confirmation by the reserving State or international organization when expressing its consent to be bound by the treaty.

#### *2.2.4 Form of formal confirmation of reservations*

The formal confirmation of a reservation must be made in writing.

### *2.3 Late formulation of reservations*

A State or an international organization may not formulate a reservation to a treaty after expressing its consent to be bound by the treaty, unless the treaty otherwise provides or none of the other contracting States and contracting organizations opposes the late formulation of the reservation.

#### *2.3.1 Acceptance of the late formulation of a reservation*

Unless the treaty otherwise provides or the well-established practice followed by the depositary differs, the late formulation of a reservation shall only be deemed to have been accepted if no contracting State or contracting organization has opposed such formulation after the expiry of the twelve-month period following the date on which notification was received.

### *2.3.2 Time period for formulating an objection to a reservation that is formulated late*

An objection to a reservation that is formulated late must be made within twelve months of the acceptance, in accordance with guideline 2.3.1, of the late formulation of the reservation.

### *2.3.3 Limits to the possibility of excluding or modifying the legal effect of a treaty by means other than reservations*

A contracting State or a contracting organization cannot exclude or modify the legal effect of provisions of the treaty by:

- (a) the interpretation of an earlier reservation; or
- (b) a unilateral statement made subsequently under a clause providing for options.

### *2.3.4 Widening of the scope of a reservation*

The modification of an existing reservation for the purpose of widening its scope is subject to the rules applicable to the late formulation of a reservation. If such a modification is opposed, the initial reservation remains unchanged.

## *2.4 Procedure for interpretative declarations*

### *2.4.1 Form of interpretative declarations*

An interpretative declaration should preferably be formulated in writing.

### *2.4.2 Representation for the purpose of formulating interpretative declarations*

An interpretative declaration must be formulated by a person who is considered as representing a State or an international organization for the purpose of adopting or authenticating the text of a treaty or expressing the consent of the State or international organization to be bound by a treaty.

### *2.4.3 Absence of consequences at the international level of the violation of internal rules regarding the formulation of interpretative declarations*

1. The competent authority and the procedure to be followed at the internal level for formulating an interpretative declaration are deter-

mined by the internal law of each State or the relevant rules of each international organization.

2. A State or an international organization may not invoke the fact that an interpretative declaration has been formulated in violation of a provision of the internal law of that State or the rules of that organization regarding competence and the procedure for formulating interpretative declarations for the purpose of invalidating the declaration.

#### *2.4.4 Time at which an interpretative declaration may be formulated*

Without prejudice to the provisions of guidelines 1.4 and 2.4.7, an interpretative declaration may be formulated at any time.

#### *2.4.5 Communication of interpretative declarations*

The communication of written interpretative declarations should follow the procedure established in guidelines 2.1.5, 2.1.6 and 2.1.7.

#### *2.4.6 Non-requirement of confirmation of interpretative declarations formulated when signing a treaty*

An interpretative declaration formulated when signing a treaty does not require subsequent confirmation when a State or an international organization expresses its consent to be bound by the treaty.

#### *2.4.7 Late formulation of an interpretative declaration*

Where a treaty provides that an interpretative declaration may be formulated only at specified times, a State or an international organization may not formulate an interpretative declaration concerning that treaty subsequently, unless none of the other contracting States and contracting organizations objects to the late formulation of the interpretative declaration.

#### *2.4.8 Modification of an interpretative declaration*

Unless the treaty otherwise provides, an interpretative declaration may be modified at any time.

### *2.5 Withdrawal and modification of reservations and interpretative declarations*

#### *2.5.1 Withdrawal of reservations*

Unless the treaty otherwise provides, a reservation may be withdrawn at any time without the consent of a State or of an international

organization which has accepted the reservation being required for its withdrawal.

### *2.5.2 Form of withdrawal*

The withdrawal of a reservation must be formulated in writing.

### *2.5.3 Periodic review of the usefulness of reservations*

1. States or international organizations which have formulated one or more reservations to a treaty should undertake a periodic review of such reservations and consider withdrawing those which no longer serve their purpose.

2. In such a review, States and international organizations should devote special attention to the aim of preserving the integrity of multi-lateral treaties and, where relevant, consider the usefulness of retaining the reservations, in particular in relation to developments in their internal law since the reservations were formulated.

### *2.5.4 Representation for the purpose of withdrawing a reservation at the international level*

1. Subject to the usual practices followed in international organizations which are depositaries of treaties, a person is considered as representing a State or an international organization for the purpose of withdrawing a reservation made on behalf of a State or an international organization if:

(a) that person produces appropriate full powers for the purpose of that withdrawal; or

(b) it appears from practice or from other circumstances that it was the intention of the States and international organizations concerned to consider that person as representing the State or the international organization for such purpose without having to produce full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing a State for the purpose of withdrawing a reservation at the international level on behalf of that State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs;

(b) representatives accredited by States to an international organization or one of its organs, for the purpose of withdrawing a reservation to a treaty adopted in that organization or organ;

(c) heads of permanent missions to an international organization, for the purpose of withdrawing a reservation to a treaty between the accrediting States and that organization.

#### *2.5.5 Absence of consequences at the international level of the violation of internal rules regarding the withdrawal of reservations*

1. The competent authority and the procedure to be followed at the internal level for withdrawing a reservation are determined by the internal law of each State or the relevant rules of each international organization.

2. A State or an international organization may not invoke the fact that a reservation has been withdrawn in violation of a provision of the internal law of that State or the rules of that organization regarding competence and the procedure for the withdrawal of reservations for the purpose of invalidating the withdrawal.

#### *2.5.6 Communication of withdrawal of a reservation*

The procedure for communicating the withdrawal of a reservation follows the rules applicable to the communication of reservations contained in guidelines 2.1.5, 2.1.6 and 2.1.7.

#### *2.5.7 Effects of withdrawal of a reservation*

1. The withdrawal of a reservation entails the full application of the provisions to which the reservation relates in the relations between the State or international organization which withdraws the reservation and all the other parties, whether they had accepted the reservation or objected to it.

2. The withdrawal of a reservation entails the entry into force of the treaty in the relations between the State or international organization which withdraws the reservation and a State or international organization which had objected to the reservation and opposed the entry into force of the treaty between itself and the reserving State or international organization by reason of that reservation.

#### *2.5.8 Effective date of withdrawal of a reservation*

Unless the treaty otherwise provides, or it is otherwise agreed, the withdrawal of a reservation becomes operative in relation to a contracting State or a contracting organization only when notice of it has been received by that State or that organization.

### *2.5.9 Cases in which the author of a reservation may set the effective date of withdrawal of the reservation*

The withdrawal of a reservation becomes operative on the date set by the State or international organization which withdraws the reservation, where:

- (a) that date is later than the date on which the other contracting States or contracting organizations received notification of it; or
- (b) the withdrawal does not add to the rights of the withdrawing State or international organization, in relation to the other contracting States or contracting organizations.

### *2.5.10 Partial withdrawal of reservations*

1. The partial withdrawal of a reservation limits the legal effect of the reservation and achieves a more complete application of the provisions of the treaty, or of the treaty as a whole, in the relations between the withdrawing State or international organization and the other parties to the treaty.

2. The partial withdrawal of a reservation is subject to the same rules on form and procedure as a total withdrawal and becomes operative on the same conditions.

### *2.5.11 Effect of a partial withdrawal of a reservation*

1. The partial withdrawal of a reservation modifies the legal effect of the reservation to the extent provided by the new formulation of the reservation. Any objection formulated to the reservation continues to have effect as long as its author does not withdraw it, insofar as the objection does not apply exclusively to that part of the reservation which has been withdrawn.

2. No new objection may be formulated to the reservation resulting from the partial withdrawal, unless that partial withdrawal has a discriminatory effect.

### *2.5.12 Withdrawal of interpretative declarations*

An interpretative declaration may be withdrawn at any time by an authority considered as representing the State or international organization for that purpose, following the same procedure applicable to its formulation.

## 2.6 *Formulation of objections*

### 2.6.1 *Definition of objections to reservations*

“Objection” means a unilateral statement, however phrased or named, made by a State or an international organization in response to a reservation formulated by another State or international organization, whereby the former State or organization purports to preclude the reservation from having its intended effects or otherwise opposes the reservation.

### 2.6.2 *Right to formulate objections*

A State or an international organization may formulate an objection to a reservation irrespective of the permissibility of the reservation.

### 2.6.3 *Author of an objection*

An objection to a reservation may be formulated by:

- (i) any contracting State or contracting organization; and
- (ii) any State or international organization that is entitled to become a party to the treaty, in which case the objection does not produce any legal effect until the State or international organization has expressed its consent to be bound by the treaty.

### 2.6.4 *Objections formulated jointly*

The joint formulation of an objection by several States or international organizations does not affect the unilateral character of that objection.

### 2.6.5 *Form of objections*

An objection must be formulated in writing.

### 2.6.6 *Right to oppose the entry into force of the treaty vis-à-vis the author of the reservation*

A State or an international organization that formulates an objection to a reservation may oppose the entry into force of the treaty as between itself and the author of the reservation.

### 2.6.7 *Expression of intention to preclude the entry into force of the treaty*

When a State or an international organization formulating an objection to a reservation intends to preclude the entry into force of the treaty as between itself and the reserving State or international organization,

it shall definitely express its intention before the treaty would otherwise enter into force between them.

#### *2.6.8 Procedure for the formulation of objections*

Guidelines 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7 are applicable *mutatis mutandis* to objections.

#### *2.6.9 Statement of reasons for objections*

An objection should, to the extent possible, indicate the reasons why it is being formulated.

#### *2.6.10 Non-requirement of confirmation of an objection formulated prior to formal confirmation of a reservation*

An objection to a reservation formulated by a State or an international organization prior to confirmation of the reservation in accordance with guideline 2.2.1 does not itself require confirmation.

#### *2.6.11 Confirmation of an objection formulated prior to the expression of consent to be bound by a treaty*

An objection formulated prior to the expression of consent to be bound by the treaty does not need to be formally confirmed by the objecting State or international organization at the time it expresses its consent to be bound if that State or that organization was a signatory to the treaty when it formulated the objection; it must be confirmed if the State or international organization had not signed the treaty.

#### *2.6.12 Time period for formulating objections*

Unless the treaty otherwise provides, a State or an international organization may formulate an objection to a reservation within a period of twelve months after it was notified of the reservation or by the date on which such State or international organization expresses its consent to be bound by the treaty, whichever is later.

#### *2.6.13 Objections formulated late*

An objection to a reservation formulated after the end of the time period specified in guideline 2.6.12 does not produce all the legal effects of an objection formulated within that time period.

## *2.7 Withdrawal and modification of objections to reservations*

### *2.7.1 Withdrawal of objections to reservations*

Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

### *2.7.2 Form of withdrawal of objections to reservations*

The withdrawal of an objection to a reservation must be formulated in writing.

### *2.7.3 Formulation and communication of the withdrawal of objections to reservations*

Guidelines 2.5.4, 2.5.5 and 2.5.6 are applicable *mutatis mutandis* to the withdrawal of objections to reservations.

### *2.7.4 Effect on reservation of withdrawal of an objection*

A State or an international organization that withdraws an objection formulated to a reservation is presumed to have accepted that reservation.

### *2.7.5 Effective date of withdrawal of an objection*

Unless the treaty otherwise provides, or it is otherwise agreed, the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State or international organization which formulated the reservation.

### *2.7.6 Cases in which the author of an objection may set the effective date of withdrawal of the objection*

The withdrawal of an objection becomes operative on the date set by its author where that date is later than the date on which the reserving State or international organization received notice of it.

### *2.7.7 Partial withdrawal of an objection*

1. Unless the treaty otherwise provides, a State or an international organization may partially withdraw an objection to a reservation.

2. The partial withdrawal of an objection is subject to the same rules on form and procedure as a total withdrawal and becomes operative on the same conditions.

### *2.7.8 Effect of a partial withdrawal of an objection*

The partial withdrawal modifies the legal effects of the objection on the treaty relations between the author of the objection and the author of the reservation to the extent provided by the new formulation of the objection.

### *2.7.9 Widening of the scope of an objection to a reservation*

1. A State or an international organization which has made an objection to a reservation may widen the scope of that objection during the time period referred to in guideline 2.6.12.

2. Such a widening of the scope of the objection cannot have an effect on the existence of treaty relations between the author of the reservation and the author of the objection.

## *2.8 Formulation of acceptances of reservations*

### *2.8.1 Forms of acceptance of reservations*

The acceptance of a reservation may arise from a unilateral statement to this effect or from silence of a contracting State or contracting organization during the periods specified in guideline 2.6.12.

### *2.8.2 Tacit acceptance of reservations*

Unless the treaty otherwise provides, a reservation is considered to have been accepted by a State or an international organization if it shall have raised no objection to the reservation within the time period provided for in guideline 2.6.12.

### *2.8.3 Express acceptance of reservations*

A State or an international organization may, at any time, expressly accept a reservation formulated by another State or international organization.

### *2.8.4 Form of express acceptance of reservations*

The express acceptance of a reservation must be formulated in writing.

### *2.8.5 Procedure for formulating express acceptance of reservations*

Guidelines 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7 apply *mutatis mutandis* to express acceptances.

*2.8.6 Non-requirement of confirmation of an acceptance formulated prior to formal confirmation of a reservation*

An express acceptance of a reservation formulated by a State or an international organization prior to confirmation of the reservation in accordance with guideline 2.2.1 does not itself require confirmation.

*2.8.7 Unanimous acceptance of reservations*

In the event of a reservation requiring unanimous acceptance by some or all States or international organizations which are parties or entitled to become parties to the treaty, such acceptance, once obtained, is final.

*2.8.8 Acceptance of a reservation to the constituent instrument of an international organization*

When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

*2.8.9 Organ competent to accept a reservation to a constituent instrument*

Subject to the rules of the organization, competence to accept a reservation to a constituent instrument of an international organization belongs to the organ competent to:

- decide on the admission of a member to the organization; or
- amend the constituent instrument; or
- interpret this instrument.

*2.8.10 Modalities of the acceptance of a reservation to a constituent instrument*

1. Subject to the rules of the organization, the acceptance by the competent organ of the organization shall not be tacit. However, the admission of the State or the international organization which is the author of the reservation is tantamount to the acceptance of that reservation.

2. For the purposes of the acceptance of a reservation to the constituent instrument of an international organization, the individual acceptance of the reservation by States or international organizations that are members of the organization is not required.

*2.8.11 Acceptance of a reservation to a constituent instrument that has not yet entered into force*

In the case set forth in guideline 2.8.8 and where the constituent instrument has not yet entered into force, a reservation is considered to have been accepted if no signatory State or signatory international organization has raised an objection to that reservation within a period of twelve months after they were notified of that reservation. Such a unanimous acceptance, once obtained, is final.

*2.8.12 Reaction by a member of an international organization to a reservation to its constituent instrument*

Guideline 2.8.10 does not preclude States or international organizations that are members of an international organization from taking a position on the permissibility or appropriateness of a reservation to a constituent instrument of the organization. Such an opinion is in itself devoid of legal effects.

*2.8.13 Final nature of acceptance of a reservation*

The acceptance of a reservation cannot be withdrawn or amended.

*2.9 Formulation of reactions to interpretative declarations*

*2.9.1 Approval of an interpretative declaration*

“Approval” of an interpretative declaration means a unilateral statement made by a State or an international organization in reaction to an interpretative declaration in respect of a treaty formulated by another State or another international organization, whereby the former State or organization expresses agreement with the interpretation formulated in that declaration.

*2.9.2 Opposition to an interpretative declaration*

“Opposition” to an interpretative declaration means a unilateral statement made by a State or an international organization in reaction to an interpretative declaration in respect of a treaty formulated by another State or another international organization, whereby the former State or organization disagrees with the interpretation formulated in the interpretative declaration, including by formulating an alternative interpretation.

### *2.9.3 Recharacterization of an interpretative declaration*

1. “Recharacterization” of an interpretative declaration means a unilateral statement made by a State or an international organization in reaction to an interpretative declaration in respect of a treaty formulated by another State or another international organization, whereby the former State or organization purports to treat the declaration as a reservation.

2. A State or an international organization that intends to treat an interpretative declaration as a reservation should take into account guidelines 1.3 to 1.3.3.

### *2.9.4 Right to formulate approval or opposition, or to recharacterize*

An approval, opposition or recharacterization in respect of an interpretative declaration may be formulated at any time by any contracting State or any contracting organization and by any State or any international organization that is entitled to become a party to the treaty.

### *2.9.5 Form of approval, opposition and recharacterization*

An approval, opposition or recharacterization in respect of an interpretative declaration should preferably be formulated in writing.

### *2.9.6 Statement of reasons for approval, opposition and recharacterization*

An approval, opposition or recharacterization in respect of an interpretative declaration should, to the extent possible, indicate the reasons why it is being formulated.

### *2.9.7 Formulation and communication of approval, opposition or recharacterization*

Guidelines 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7 are applicable *mutatis mutandis* to an approval, opposition or recharacterization in respect of an interpretative declaration.

### *2.9.8 Non-presumption of approval or opposition*

1. An approval of, or an opposition to, an interpretative declaration shall not be presumed.

2. Notwithstanding guidelines 2.9.1 and 2.9.2, an approval of an interpretative declaration or an opposition thereto may be inferred, in exceptional cases, from the conduct of the States or international organizations concerned, taking into account all relevant circumstances.

### *2.9.9 Silence with respect to an interpretative declaration*

An approval of an interpretative declaration shall not be inferred from the mere silence of a State or an international organization.

## *3. Permissibility of reservations and interpretative declarations*

### *3.1 Permissible reservations*

A State or an international organization may, when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, formulate a reservation unless:

- (a) the reservation is prohibited by the treaty;
- (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

#### *3.1.1 Reservations prohibited by the treaty*

A reservation is prohibited by the treaty if it contains a provision:

- (a) prohibiting all reservations;
- (b) prohibiting reservations to specified provisions to which the reservation in question relates; or
- (c) prohibiting certain categories of reservations including the reservation in question.

#### *3.1.2 Definition of specified reservations*

For the purposes of guideline 3.1, the expression “specified reservations” means reservations that are expressly envisaged in the treaty to certain provisions of the treaty or to the treaty as a whole with respect to certain specific aspects.

#### *3.1.3 Permissibility of reservations not prohibited by the treaty*

Where the treaty prohibits the formulation of certain reservations, a reservation which is not prohibited by the treaty may be formulated by a State or an international organization only if it is not incompatible with the object and purpose of the treaty.

#### *3.1.4 Permissibility of specified reservations*

Where the treaty envisages the formulation of specified reservations without defining their content, a reservation may be formulated

by a State or an international organization only if it is not incompatible with the object and purpose of the treaty.

### *3.1.5 Incompatibility of a reservation with the object and purpose of the treaty*

A reservation is incompatible with the object and purpose of the treaty if it affects an essential element of the treaty that is necessary to its general tenour, in such a way that the reservation impairs the *raison d'être* of the treaty.

#### *3.1.5.1 Determination of the object and purpose of the treaty*

The object and purpose of the treaty is to be determined in good faith, taking account of the terms of the treaty in their context, in particular the title and the preamble of the treaty. Recourse may also be had to the preparatory work of the treaty and the circumstances of its conclusion and, where appropriate, the subsequent practice of the parties.

#### *3.1.5.2 Vague or general reservations*

A reservation shall be worded in such a way as to allow its meaning to be understood, in order to assess in particular its compatibility with the object and purpose of the treaty.

#### *3.1.5.3 Reservations to a provision reflecting a customary rule*

The fact that a treaty provision reflects a rule of customary international law does not in itself constitute an obstacle to the formulation of a reservation to that provision.

#### *3.1.5.4 Reservations to provisions concerning rights from which no derogation is permissible under any circumstances*

A State or an international organization may not formulate a reservation to a treaty provision concerning rights from which no derogation is permissible under any circumstances, unless the reservation in question is compatible with the essential rights and obligations arising out of that treaty. In assessing that compatibility, account shall be taken of the importance which the parties have conferred upon the rights at issue by making them non-derogable.

#### *3.1.5.5 Reservations relating to internal law*

A reservation by which a State or an international organization purports to exclude or to modify the legal effect of certain provisions of

a treaty or of the treaty as a whole in order to preserve the integrity of specific rules of the internal law of that State or of specific rules of that organization in force at the time of the formulation of the reservation may be formulated only insofar as it does not affect an essential element of the treaty nor its general tenour.

### *3.1.5.6 Reservations to treaties containing numerous interdependent rights and obligations*

To assess the compatibility of a reservation with the object and purpose of a treaty containing numerous interdependent rights and obligations, account shall be taken of that interdependence as well as the importance that the provision to which the reservation relates has within the general tenour of the treaty, and the extent of the impact that the reservation has on the treaty.

### *3.1.5.7 Reservations to treaty provisions concerning dispute settlement or the monitoring of the implementation of the treaty*

A reservation to a treaty provision concerning dispute settlement or the monitoring of the implementation of the treaty is not, in itself, incompatible with the object and purpose of the treaty, unless:

- (i) the reservation purports to exclude or modify the legal effect of a provision of the treaty essential to its *raison d'être*; or
- (ii) the reservation has the effect of excluding the reserving State or international organization from a dispute settlement or treaty implementation monitoring mechanism with respect to a treaty provision that it has previously accepted, if the very purpose of the treaty is to put such a mechanism into effect.

## *3.2 Assessment of the permissibility of reservations*

The following may assess, within their respective competences, the permissibility of reservations to a treaty formulated by a State or an international organization:

- contracting States or contracting organizations;
- dispute settlement bodies;
- treaty monitoring bodies.

*3.2.1 Competence of the treaty monitoring bodies to assess the permissibility of reservations*

1. A treaty monitoring body may, for the purpose of discharging the functions entrusted to it, assess the permissibility of reservations formulated by a State or an international organization.

2. The assessment made by such a body in the exercise of this competence has no greater legal effect than that of the act which contains it.

*3.2.2 Specification of the competence of treaty monitoring bodies to assess the permissibility of reservations*

When providing bodies with the competence to monitor the application of treaties, States or international organizations should specify, where appropriate, the nature and the limits of the competence of such bodies to assess the permissibility of reservations.

*3.2.3 Consideration of the assessments of treaty monitoring bodies*

States and international organizations that have formulated reservations to a treaty establishing a treaty monitoring body shall give consideration to that body's assessment of the permissibility of the reservations.

*3.2.4 Bodies competent to assess the permissibility of reservations in the event of the establishment of a treaty monitoring body*

When a treaty establishes a treaty monitoring body, the competence of that body is without prejudice to the competence of the contracting States or contracting organizations to assess the permissibility of reservations to that treaty, or to that of dispute settlement bodies competent to interpret or apply the treaty.

*3.2.5 Competence of dispute settlement bodies to assess the permissibility of reservations*

When a dispute settlement body is competent to adopt decisions binding upon the parties to a dispute, and the assessment of the permissibility of a reservation is necessary for the discharge of such competence by that body, such assessment is, as an element of the decision, legally binding upon the parties.

### *3.3 Consequences of the non-permissibility of a reservation*

#### *3.3.1 Irrelevance of distinction among the grounds for non-permissibility*

A reservation formulated notwithstanding a prohibition arising from the provisions of the treaty or notwithstanding its incompatibility with the object and purpose of the treaty is impermissible, without there being any need to distinguish between the consequences of these grounds for non-permissibility.

#### *3.3.2 Non-permissibility of reservations and international responsibility*

The formulation of an impermissible reservation produces its consequences pursuant to the law of treaties and does not engage the international responsibility of the State or international organization which has formulated it.

#### *3.3.3 Absence of effect of individual acceptance of a reservation on the permissibility of the reservation*

Acceptance of an impermissible reservation by a contracting State or by a contracting organization shall not affect the impermissibility of the reservation.

### *3.4 Permissibility of reactions to reservations*

#### *3.4.1 Permissibility of the acceptance of a reservation*

Acceptance of a reservation is not subject to any condition of permissibility.

#### *3.4.2 Permissibility of an objection to a reservation*

An objection to a reservation by which a State or an international organization purports to exclude in its relations with the author of the reservation the application of provisions of the treaty to which the reservation does not relate is only permissible if:

(1) the provisions thus excluded have a sufficient link with the provisions to which the reservation relates; and

(2) the objection would not defeat the object and purpose of the treaty in the relations between the author of the reservation and the author of the objection.

### *3.5 Permissibility of an interpretative declaration*

A State or an international organization may formulate an interpretative declaration unless the interpretative declaration is prohibited by the treaty.

#### *3.5.1 Permissibility of an interpretative declaration which is in fact a reservation*

If a unilateral statement which appears to be an interpretative declaration is in fact a reservation, its permissibility must be assessed in accordance with the provisions of guidelines 3.1 to 3.1.5.7.

### *3.6 Permissibility of reactions to interpretative declarations*

An approval of, opposition to, or recharacterization of, an interpretative declaration shall not be subject to any conditions for permissibility.

## *4. Legal effects of reservations and interpretative declarations*

### *4.1 Establishment of a reservation with regard to another State or international organization*

A reservation formulated by a State or an international organization is established with regard to a contracting State or a contracting organization if it is permissible and was formulated in accordance with the required form and procedures, and if that contracting State or contracting organization has accepted it.

#### *4.1.1 Establishment of a reservation expressly authorized by a treaty*

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States and contracting organizations, unless the treaty so provides.

2. A reservation expressly authorized by a treaty is established with regard to the other contracting States and contracting organizations if it was formulated in accordance with the required form and procedures.

#### *4.1.2 Establishment of a reservation to a treaty which has to be applied in its entirety*

When it appears, from the limited number of negotiating States and organizations and the object and purpose of the treaty, that the application of the treaty in its entirety between all the parties is an essential

condition of the consent of each one to be bound by the treaty, a reservation to this treaty is established with regard to the other contracting States and contracting organizations if it is permissible and was formulated in accordance with the required form and procedures, and if all the contracting States and contracting organizations have accepted it.

#### *4.1.3 Establishment of a reservation to a constituent instrument of an international organization*

When a treaty is a constituent instrument of an international organization, a reservation to this treaty is established with regard to the other contracting States and contracting organizations if it is permissible and was formulated in accordance with the required form and procedures, and if it has been accepted in conformity with guidelines 2.8.8 to 2.8.11.

### *4.2 Effects of an established reservation*

#### *4.2.1 Status of the author of an established reservation*

As soon as a reservation is established in accordance with guidelines 4.1 to 4.1.3, its author becomes a contracting State or contracting organization to the treaty.

#### *4.2.2 Effect of the establishment of a reservation on the entry into force of a treaty*

1. When a treaty has not yet entered into force, the author of a reservation shall be included in the number of contracting States and contracting organizations required for the treaty to enter into force once the reservation is established.

2. The author of the reservation may however be included at a date prior to the establishment of the reservation in the number of contracting States and contracting organizations required for the treaty to enter into force, if no contracting State or contracting organization is opposed.

#### *4.2.3 Effect of the establishment of a reservation on the status of the author as a party to the treaty*

The establishment of a reservation constitutes its author a party to the treaty in relation to contracting States and contracting organizations in respect of which the reservation is established if or when the treaty is in force.

#### *4.2.4 Effect of an established reservation on treaty relations*

1. A reservation established with regard to another party excludes or modifies for the reserving State or international organization in its relations with that other party the legal effect of the provisions of the treaty to which the reservation relates or of the treaty as a whole with respect to certain specific aspects, to the extent of the reservation.

2. To the extent that an established reservation excludes the legal effect of certain provisions of a treaty, the author of that reservation has neither rights nor obligations under those provisions in its relations with the other parties with regard to which the reservation is established. Those other parties shall likewise have neither rights nor obligations under those provisions in their relations with the author of the reservation.

3. To the extent that an established reservation modifies the legal effect of certain provisions of a treaty, the author of that reservation has rights and obligations under those provisions, as modified by the reservation, in its relations with the other parties with regard to which the reservation is established. Those other parties shall have rights and obligations under those provisions, as modified by the reservation, in their relations with the author of the reservation.

#### *4.2.5 Non-reciprocal application of obligations to which a reservation relates*

Insofar as the obligations under the provisions to which the reservation relates are not subject to reciprocal application in view of the nature of the obligations or the object and purpose of the treaty, the content of the obligations of the parties other than the author of the reservation remains unaffected. The content of the obligations of those parties likewise remains unaffected when reciprocal application is not possible because of the content of the reservation.

#### *4.2.6 Interpretation of reservations*

A reservation is to be interpreted in good faith, taking into account the intention of its author as reflected primarily in the text of the reservation, as well as the object and purpose of the treaty and the circumstances in which the reservation was formulated.

#### *4.3 Effect of an objection to a valid reservation*

Unless the reservation has been established with regard to an objecting State or organization, the formulation of an objection to a valid res-

ervation precludes the reservation from having its intended effects as against that State or international organization.

#### *4.3.1 Effect of an objection on the entry into force of the treaty as between the author of the objection and the author of a reservation*

An objection by a contracting State or by a contracting organization to a valid reservation does not preclude the entry into force of the treaty as between the objecting State or organization and the reserving State or organization, except in the case mentioned in guideline 4.3.5.

#### *4.3.2 Effect of an objection to a reservation that is formulated late*

If a contracting State or a contracting organization to a treaty objects to a reservation whose late formulation has been unanimously accepted in accordance with guideline 2.3.1, the treaty shall enter into or remain in force in respect of the reserving State or international organization without the reservation being established.

#### *4.3.3 Entry into force of the treaty between the author of a reservation and the author of an objection*

The treaty enters into force between the author of a valid reservation and the objecting contracting State or contracting organization as soon as the author of the reservation has become a contracting State or a contracting organization in accordance with guideline 4.2.1 and the treaty has entered into force.

#### *4.3.4 Non-entry into force of the treaty for the author of a reservation when unanimous acceptance is required*

If the establishment of a reservation requires the acceptance of the reservation by all the contracting States and contracting organizations, any objection by a contracting State or by a contracting organization to a valid reservation precludes the entry into force of the treaty for the reserving State or organization.

#### *4.3.5 Non-entry into force of the treaty as between the author of a reservation and the author of an objection with maximum effect*

An objection by a contracting State or a contracting organization to a valid reservation precludes the entry into force of the treaty as between the objecting State or organization and the reserving State or organization, if the objecting State or organization has definitely expressed an intention to that effect in accordance with guideline 2.6.7.

*4.3.6 Effect of an objection on treaty relations*

1. When a State or an international organization objecting to a valid reservation has not opposed the entry into force of the treaty between itself and the reserving State or organization, the provisions to which the reservation relates do not apply as between the author of the reservation and the objecting State or organization, to the extent of the reservation.
2. To the extent that a valid reservation purports to exclude the legal effect of certain provisions of the treaty, when a contracting State or a contracting organization has raised an objection to it but has not opposed the entry into force of the treaty between itself and the author of the reservation, the objecting State or organization and the author of the reservation are not bound, in their treaty relations, by the provisions to which the reservation relates.
3. To the extent that a valid reservation purports to modify the legal effect of certain provisions of the treaty, when a contracting State or a contracting organization has raised an objection to it but has not opposed the entry into force of the treaty between itself and the author of the reservation, the objecting State or organization and the author of the reservation are not bound, in their treaty relations, by the provisions of the treaty as intended to be modified by the reservation.

4. All the provisions of the treaty other than those to which the reservation relates shall remain applicable as between the reserving State or organization and the objecting State or organization.

*4.3.7 Effect of an objection on provisions other than those to which the reservation relates*

1. A provision of the treaty to which the reservation does not relate, but which has a sufficient link with the provisions to which the reservation does relate, is not applicable in the treaty relations between the author of the reservation and the author of an objection formulated in accordance with guideline 3.4.2.
2. The reserving State or international organization may, within a period of twelve months following the notification of an objection which has the effect referred to in paragraph 1, oppose the entry into force of the treaty between itself and the objecting State or organization. In the absence of such opposition, the treaty shall apply between the author of the reservation and the author of the objection to the extent provided by the reservation and the objection.

#### *4.3.8 Right of the author of a valid reservation not to comply with the treaty without the benefit of its reservation*

The author of a valid reservation is not required to comply with the provisions of the treaty without the benefit of its reservation.

### *4.4 Effect of a reservation on rights and obligations independent of the treaty*

#### *4.4.1 Absence of effect on rights and obligations under other treaties*

A reservation, acceptance of a reservation or objection to a reservation neither modifies nor excludes any rights and obligations of their authors under other treaties to which they are parties.

#### *4.4.2 Absence of effect on rights and obligations under customary international law*

A reservation to a treaty provision which reflects a rule of customary international law does not of itself affect the rights and obligations under that rule, which shall continue to apply as such between the reserving State or organization and other States or international organizations which are bound by that rule.

#### *4.4.3 Absence of effect on a peremptory norm of general international law (jus cogens)*

1. A reservation to a treaty provision which reflects a peremptory norm of general international law (*jus cogens*) does not affect the binding nature of that norm, which shall continue to apply as such between the reserving State or organization and other States or international organizations.

2. A reservation cannot exclude or modify the legal effect of a treaty in a manner contrary to a peremptory norm of general international law.

### *4.5 Consequences of an invalid reservation*

#### *4.5.1 Nullity of an invalid reservation*

A reservation that does not meet the conditions of formal validity and permissibility set out in Parts 2 and 3 of the Guide to Practice is null and void, and therefore devoid of any legal effect.

#### *4.5.2 Reactions to a reservation considered invalid*

1. The nullity of an invalid reservation does not depend on the objection or the acceptance by a contracting State or a contracting organization.
2. Nevertheless, a State or an international organization which considers that a reservation is invalid should formulate a reasoned objection as soon as possible.

#### *4.5.3 Status of the author of an invalid reservation in relation to the treaty*

1. The status of the author of an invalid reservation in relation to a treaty depends on the intention expressed by the reserving State or international organization on whether it intends to be bound by the treaty without the benefit of the reservation or whether it considers that it is not bound by the treaty.
2. Unless the author of the invalid reservation has expressed a contrary intention or such an intention is otherwise established, it is considered a contracting State or a contracting organization without the benefit of the reservation.
3. Notwithstanding paragraphs 1 and 2, the author of the invalid reservation may express at any time its intention not to be bound by the treaty without the benefit of the reservation.
4. If a treaty monitoring body expresses the view that a reservation is invalid and the reserving State or international organization intends not to be bound by the treaty without the benefit of the reservation, it should express its intention to that effect within a period of twelve months from the date at which the treaty monitoring body made its assessment.

#### *4.6 Absence of effect of a reservation on the relations between the other parties to the treaty*

A reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

#### *4.7 Effect of interpretative declarations*

##### *4.7.1 Clarification of the terms of the treaty by an interpretative declaration*

1. An interpretative declaration does not modify treaty obligations. It may only specify or clarify the meaning or scope which its author attributes to a treaty or to certain provisions thereof and may, as appro-

priate, constitute an element to be taken into account in interpreting the treaty in accordance with the general rule of interpretation of treaties.

2. In interpreting the treaty, account shall also be taken, as appropriate, of the approval of, or opposition to, the interpretative declaration, by other contracting States or contracting organizations.

#### *4.7.2 Effect of the modification or the withdrawal of an interpretative declaration*

The modification or the withdrawal of an interpretative declaration may not produce the effects provided for in guideline 4.7.1 to the extent that other contracting States or contracting organizations have relied upon the initial declaration.

#### *4.7.3 Effect of an interpretative declaration approved by all the contracting States and contracting organizations*

An interpretative declaration that has been approved by all the contracting States and contracting organizations may constitute an agreement regarding the interpretation of the treaty.

### *5. Reservations, acceptances of reservations, objections to reservations, and interpretative declarations in cases of succession of States*

#### *5.1 Reservations in cases of succession of States*

##### *5.1.1 Newly independent States*

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession, it shall be considered as maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject matter as that reservation.

2. When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraph (a), (b) or (c) of guideline 3.1.

3. When a newly independent State formulates a reservation in conformity with paragraph 2, the relevant rules set out in Part 2 (Procedure) of the Guide to Practice apply in respect of that reservation.

4. For the purposes of this Part of the Guide to Practice, “newly independent State” means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible.

### *5.1.2 Uniting or separation of States*

1. Subject to the provisions of guideline 5.1.3, a successor State which is a party to a treaty as the result of a uniting or separation of States shall be considered as maintaining any reservation to the treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates, unless it expresses its intention not to maintain one or more reservations of the predecessor State at the time of the succession.

2. A successor State which is a party to a treaty as the result of a uniting or separation of States may neither formulate a new reservation nor widen the scope of a reservation that is maintained.

3. When a successor State formed from a uniting or separation of States makes a notification whereby it establishes its status as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but to which the predecessor State was a contracting State, that State shall be considered as maintaining any reservation to the treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates, unless it expresses a contrary intention when making the notification or formulates a reservation which relates to the same subject matter as that reservation. That successor State may formulate a new reservation to the treaty.

4. A successor State may formulate a reservation in accordance with paragraph 3 only if the reservation is one the formulation of which would not be excluded by the provisions of subparagraph (a), (b) or (c) of guideline 3.1. The relevant rules set out in Part 2 (Procedure) of the Guide to Practice apply in respect of that reservation.

### *5.1.3 Irrelevance of certain reservations in cases involving a uniting of States*

When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State, such reservations as may have been formulated by any such State which, at the date of the succession of States, was a contracting State in respect of which the treaty was not in force shall not be maintained.

*5.1.4 Maintenance of the territorial scope of reservations formulated by the predecessor State*

Subject to the provisions of guideline 5.1.5, a reservation considered as being maintained in conformity with guideline 5.1.1, paragraph 1, or guideline 5.1.2, paragraph 1 or 3, shall retain the territorial scope that it had at the date of the succession of States, unless the successor State expresses a contrary intention.

*5.1.5 Territorial scope of reservations in cases involving a uniting of States*

1. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of only one of the States forming the successor State becomes applicable to a part of the territory of that State to which it did not apply previously, any reservation considered as being maintained by the successor State shall apply to that territory unless:

(a) the successor State expresses a contrary intention when making the notification extending the territorial scope of the treaty; or

(b) the nature or purpose of the reservation is such that the reservation cannot be extended beyond the territory to which it was applicable at the date of the succession of States.

2. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of two or more of the uniting States becomes applicable to a part of the territory of the successor State to which it did not apply at the date of the succession of States, no reservation shall extend to that territory unless:

(a) an identical reservation has been formulated by each of those States in respect of which the treaty was in force at the date of the succession of States;

(b) the successor State expresses a different intention when making the notification extending the territorial scope of the treaty; or

(c) a contrary intention otherwise becomes apparent from the circumstances surrounding that State's succession to the treaty.

3. A notification purporting to extend the territorial scope of a reservation in accordance with paragraph 2 (b) shall be without effect if such an extension would give rise to the application of contradictory reservations to the same territory.

4. The provisions of paragraphs 1 to 3 apply *mutatis mutandis* to reservations considered as being maintained by a successor State that is a contracting State, following a uniting of States, to a treaty which was not in force for any of the uniting States at the date of the succession of

States but to which one or more of those States were contracting States at that date, when the treaty becomes applicable to a part of the territory of the successor State to which it did not apply at the date of the succession of States.

*5.1.6 Territorial scope of reservations of the successor State in cases of succession involving part of territory*

When, as a result of a succession of States involving part of the territory of a State, a treaty to which the successor State is a contracting State becomes applicable to that territory, any reservation to the treaty formulated previously by that State shall also apply to that territory as from the date of the succession of States unless:

- (a) the successor State expresses a contrary intention; or
- (b) it appears from the reservation that its scope was limited to the territory of the successor State that was within its borders prior to the date of the succession of States, or to a part of this territory.

*5.1.7 Timing of the effects of non-maintenance by a successor State of a reservation formulated by the predecessor State*

The non-maintenance, in conformity with guideline 5.1.1 or 5.1.2, by the successor State of a reservation formulated by the predecessor State becomes operative in relation to another contracting State or a contracting organization only when notice of it has been received by that State or organization.

*5.1.8 Late formulation of a reservation by a successor State*

A reservation shall be considered as late if it is formulated:

- (a) by a newly independent State after it has made a notification of succession to the treaty;
- (b) by a successor State other than a newly independent State after it has made a notification establishing its status as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but in respect of which the predecessor State was a contracting State; or
- (c) by a successor State other than a newly independent State in respect of a treaty which, following the succession of States, continues in force for that State.

## *5.2 Objections to reservations in cases of succession of States*

### *5.2.1 Maintenance by the successor State of objections formulated by the predecessor State*

Subject to the provisions of guideline 5.2.2, a successor State shall be considered as maintaining any objection formulated by the predecessor State to a reservation formulated by a contracting State or contracting organization, unless it expresses a contrary intention at the time of the succession.

### *5.2.2 Irrelevance of certain objections in cases involving a uniting of States*

1. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the State so formed, such objections to a reservation as may have been formulated by any of those States in respect of which the treaty was not in force on the date of the succession of States shall not be maintained.

2. When, following a uniting of two or more States, the successor State is a contracting State to a treaty to which it has maintained reservations in conformity with guideline 5.1.1 or 5.1.2, objections to a reservation made by another contracting State or a contracting organization shall not be maintained if the reservation is identical or equivalent to a reservation which the successor State itself has maintained.

### *5.2.3 Maintenance of objections to reservations of the predecessor State*

When a reservation formulated by the predecessor State is considered as being maintained by the successor State in conformity with guideline 5.1.1 or 5.1.2, any objection to that reservation formulated by another contracting State or by a contracting organization shall be considered as being maintained in respect of the successor State.

### *5.2.4 Reservations of the predecessor State to which no objections have been made*

When a reservation formulated by the predecessor State is considered as being maintained by the successor State in conformity with guideline 5.1.1 or 5.1.2, a State or an international organization that had not formulated an objection to the reservation in respect of the predecessor State may not object to it in respect of the successor State, unless:

- (a) the time period for formulating an objection has not yet expired at the date of the succession of States and the objection is made within that time period; or
- (b) the territorial extension of the treaty radically changes the conditions for the operation of the reservation.

#### *5.2.5 Right of a successor State to formulate objections to reservations*

1. When making a notification of succession establishing its status as a contracting State, a newly independent State may, in accordance with the relevant guidelines, formulate an objection to reservations formulated by a contracting State or a contracting organization, even if the predecessor State made no such objection.

2. A successor State, other than a newly independent State, shall also have the right provided for in paragraph 1 when making a notification establishing its status as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but in respect of which the predecessor State was a contracting State.

3. The right referred to in paragraphs 1 and 2 is nonetheless excluded in the case of treaties falling under guidelines 2.8.7 and 4.1.2.

#### *5.2.6 Objections by a successor State other than a newly independent State in respect of which a treaty continues in force*

A successor State, other than a newly independent State, in respect of which a treaty continues in force following a succession of States may not formulate an objection to a reservation to which the predecessor State had not objected, unless the time period for formulating an objection has not yet expired at the date of the succession of States and the objection is made within that time period.

### *5.3 Acceptances of reservations in cases of succession of States*

#### *5.3.1 Maintenance by a newly independent State of express acceptances formulated by the predecessor State*

When a newly independent State establishes its status as a contracting State to a treaty, it shall be considered as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization, unless it expresses a contrary intention within twelve months of the date of the notification of succession.

*5.3.2 Maintenance by a successor State other than a newly independent State of express acceptances formulated by the predecessor State*

1. A successor State, other than a newly independent State, in respect of which a treaty continues in force following a succession of States shall be considered as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization.
2. When making a notification of succession establishing its status as a contracting State to a treaty which, on the date of the succession of States, was not in force for the predecessor State but to which the predecessor State was a contracting State, a successor State other than a newly independent State shall be considered as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization, unless it expresses a contrary intention within twelve months of the date of the notification of succession.

*5.3.3 Timing of the effects of non-maintenance by a successor State of an express acceptance formulated by the predecessor State*

The non-maintenance, in conformity with guideline 5.3.1 or guideline 5.3.2, paragraph 2, by the successor State of the express acceptance by the predecessor State of a reservation formulated by a contracting State or a contracting organization becomes operative in relation to a contracting State or a contracting organization only when notice of it has been received by that State or that organization.

*5.4 Legal effects of reservations, acceptances and objections in cases of succession of States*

1. Reservations, acceptances and objections considered as being maintained pursuant to the guidelines contained in this Part of the Guide to Practice shall continue to produce their legal effects in conformity with the provisions of Part 4 of the Guide.
2. Part 4 of the Guide to Practice is also applicable, *mutatis mutandis*, to new reservations, acceptances and objections formulated by a successor State in conformity with the provisions of the present Part of the Guide.

*5.5 Interpretative declarations in cases of succession of States*

1. A successor State should clarify its position concerning interpretative declarations formulated by the predecessor State. In the

absence of such clarification, a successor State shall be considered as maintaining the interpretative declarations of the predecessor State.

2. Paragraph 1 is without prejudice to cases in which the successor State has demonstrated, by its conduct, its intention to maintain or to reject an interpretative declaration formulated by the predecessor State.

#### ANNEX. CONCLUSIONS ON THE RESERVATIONS DIALOGUE

##### *The International Law Commission,*

*Recalling* the provisions on reservations to treaties contained in the Vienna Convention on the Law of Treaties and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations,

*Taking into account* the seventeenth report<sup>3</sup> presented by the Special Rapporteur on the topic “Reservations to treaties”, which addresses the question of the reservations dialogue,

*Bearing in mind* the need to achieve a satisfactory balance between the objectives of safeguarding the integrity of multilateral treaties and securing the widest possible participation therein,

*Recognizing* the role that reservations to treaties may play in achieving this balance,

*Concerned* at the number of reservations that appear incompatible with the limits imposed by the law of treaties, in particular article 19 of the Vienna Conventions on the Law of Treaties,

*Aware* of the difficulties raised by the assessment of the validity of reservations,

*Convinced* of the usefulness of a pragmatic dialogue with the author of a reservation,

*Welcoming* the efforts made in recent years, including within the framework of international organizations and human rights treaty bodies, to encourage such a dialogue,

##### *I. Considers that:*

1. States and international organizations intending to formulate reservations should do so as precisely and narrowly as possible, consider limiting their scope and ensure that they are not incompatible with the object and purpose of the treaty to which they relate;

2. In formulating a unilateral statement, States and international organizations should indicate whether it amounts to a reservation and, if so, explain why the reservation is deemed necessary and the effect

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<sup>3</sup> A/CN.4/647, paras. 2 to 68.

it will have on the fulfilment by its author of its obligations under the treaty;

3. Statements of reasons by the author of a reservation are important for the assessment of the validity of the reservation, and States and international organizations should state the reason for any modification of a reservation;

4. States and international organizations should periodically review their reservations with a view to limiting their scope or withdrawing them where appropriate;

5. The concerns about reservations that are frequently expressed by States and international organizations, as well as monitoring bodies, may be useful for the assessment of the validity of reservations;

6. States and international organizations, as well as monitoring bodies, should explain to the author of a reservation the reasons for their concerns about the reservation and, where appropriate, request any clarification that they deem useful;

7. States and international organizations, as well as monitoring bodies, if they deem it useful, should encourage the withdrawal of reservations, the reconsideration of the need for a reservation or the gradual reduction of the scope of a reservation through partial withdrawals;

8. States and international organizations should address the concerns and reactions of other States, international organizations and monitoring bodies and take them into account, to the extent possible, with a view to reconsidering, modifying or withdrawing a reservation;

9. States and international organizations, as well as monitoring bodies, should cooperate as closely as possible in order to exchange views on reservations in respect of which concerns have been raised and coordinate the measures to be taken; and

*II. Recommends that:*

The General Assembly call upon States and international organizations, as well as monitoring bodies, to initiate and pursue such a reservations dialogue in a pragmatic and transparent manner.

## 18. ARTICLES ON THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS\*

### PART ONE. INTRODUCTION

#### *Article 1. Scope of the present articles*

1. The present articles apply to the international responsibility of an international organization for an internationally wrongful act.
2. The present articles also apply to the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organization.

#### *Article 2. Use of terms*

For the purposes of the present articles,

- (a) “international organization” means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities;
- (b) “rules of the organization” means, in particular, the constituent instruments, decisions, resolutions and other acts of the international organization adopted in accordance with those instruments, and established practice of the organization;
- (c) “organ of an international organization” means any person or entity which has that status in accordance with the rules of the organization;
- (d) “agent of an international organization” means an official or other person or entity, other than an organ, who is charged by the organization with carrying out, or helping to carry out, one of its functions, and thus through whom the organization acts.

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\* Text adopted by the Commission at its sixty-third session, in 2011, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles as adopted by the Commission, appears in *Official Records of the General Assembly, Sixty-sixth session, Supplement No. 10* (A/66/10 and Add.1). Text reproduced as it appears in the annex to General Assembly resolution 66/100 of 9 December 2011.

**PART TWO. THE INTERNATIONALLY WRONGFUL ACT OF AN INTERNATIONAL ORGANIZATION****Chapter I. General principles*****Article 3. Responsibility of an international organization for its internationally wrongful acts***

Every internationally wrongful act of an international organization entails the international responsibility of that organization.

***Article 4. Elements of an internationally wrongful act of an international organization***

There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:

- (a) is attributable to that organization under international law; and
- (b) constitutes a breach of an international obligation of that organization.

***Article 5. Characterization of an act of an international organization as internationally wrongful***

The characterization of an act of an international organization as internationally wrongful is governed by international law.

**Chapter II. Attribution of conduct to an international organization*****Article 6. Conduct of organs or agents of an international organization***

1. The conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.

2. The rules of the organization apply in the determination of the functions of its organs and agents.

***Article 7. Conduct of organs of a State or organs or agents of an international organization placed at the disposal of another international organization***

The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.

*Article 8. Excess of authority or contravention of instructions*

The conduct of an organ or agent of an international organization shall be considered an act of that organization under international law if the organ or agent acts in an official capacity and within the overall functions of that organization, even if the conduct exceeds the authority of that organ or agent or contravenes instructions.

*Article 9. Conduct acknowledged and adopted by an international organization as its own*

Conduct which is not attributable to an international organization under articles 6 to 8 shall nevertheless be considered an act of that organization under international law if and to the extent that the organization acknowledges and adopts the conduct in question as its own.

### Chapter III. Breach of an international obligation

*Article 10. Existence of a breach of an international obligation*

1. There is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned.

2. Paragraph 1 includes the breach of any international obligation that may arise for an international organization towards its members under the rules of the organization.

*Article 11. International obligation in force for an international organization*

An act of an international organization does not constitute a breach of an international obligation unless the organization is bound by the obligation in question at the time the act occurs.

*Article 12. Extension in time of the breach of an international obligation*

1. The breach of an international obligation by an act of an international organization not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of an international organization having a continuing character extends over the entire period during which the act continues and remains not in conformity with that obligation.

3. The breach of an international obligation requiring an international organization to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

*Article 13. Breach consisting of a composite act*

1. The breach of an international obligation by an international organization through a series of actions and omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

Chapter IV. Responsibility of an international organization in connection with the act of a State or another international organization

*Article 14. Aid or assistance in the commission of an internationally wrongful act*

An international organization which aids or assists a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for doing so if:

- (a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that organization.

*Article 15. Direction and control exercised over the commission of an internationally wrongful act*

An international organization which directs and controls a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for that act if:

- (a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that organization.

*Article 16. Coercion of a State or another international organization*

An international organization which coerces a State or another international organization to commit an act is internationally responsible for that act if:

(a) the act would, but for the coercion, be an internationally wrongful act of the coerced State or international organization; and

(b) the coercing international organization does so with knowledge of the circumstances of the act.

*Article 17. Circumvention of international obligations through decisions and authorizations addressed to members*

1. An international organization incurs international responsibility if it circumvents one of its international obligations by adopting a decision binding member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization.

2. An international organization incurs international responsibility if it circumvents one of its international obligations by authorizing member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization and the act in question is committed because of that authorization.

3. Paragraphs 1 and 2 apply whether or not the act in question is internationally wrongful for the member States or international organizations to which the decision or authorization is addressed.

*Article 18. Responsibility of an international organization member of another international organization*

Without prejudice to articles 14 to 17, the international responsibility of an international organization that is a member of another international organization also arises in relation to an act of the latter under the conditions set out in articles 61 and 62 for States that are members of an international organization.

*Article 19. Effect of this Chapter*

This Chapter is without prejudice to the international responsibility of the State or international organization which commits the act in question, or of any other State or international organization.

## Chapter V. Circumstances precluding wrongfulness

### *Article 20. Consent*

Valid consent by a State or an international organization to the commission of a given act by another international organization precludes the wrongfulness of that act in relation to that State or the former organization to the extent that the act remains within the limits of that consent.

### *Article 21. Self-defence*

The wrongfulness of an act of an international organization is precluded if and to the extent that the act constitutes a lawful measure of self-defence under international law.

### *Article 22. Countermeasures*

1. Subject to paragraphs 2 and 3, the wrongfulness of an act of an international organization not in conformity with an international obligation towards a State or another international organization is precluded if and to the extent that the act constitutes a countermeasure taken in accordance with the substantive and procedural conditions required by international law, including those set forth in Chapter II of Part Four for countermeasures taken against another international organization.

2. Subject to paragraph 3, an international organization may not take countermeasures against a responsible member State or international organization unless:

(a) the conditions referred to in paragraph 1 are met;

(b) the countermeasures are not inconsistent with the rules of the organization; and

(c) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible State or international organization concerning cessation of the breach and reparation.

3. Countermeasures may not be taken by an international organization against a member State or international organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

### *Article 23. Force majeure*

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the act is due to *force majeure*, that is, the occurrence of an irresistible force or of an unforeseen event, beyond the control of the

organization, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

(a) the situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(b) the organization has assumed the risk of that situation occurring.

#### *Article 24. Distress*

1. The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

(a) the situation of distress is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or

(b) the act in question is likely to create a comparable or greater peril.

#### *Article 25. Necessity*

1. Necessity may not be invoked by an international organization as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that organization unless the act:

(a) is the only means for the organization to safeguard against a grave and imminent peril an essential interest of its member States or of the international community as a whole, when the organization has, in accordance with international law, the function to protect the interest in question; and

(b) does not seriously impair an essential interest of the State or States towards which the international obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by an international organization as a ground for precluding wrongfulness if:

(a) the international obligation in question excludes the possibility of invoking necessity; or

(b) the organization has contributed to the situation of necessity.

*Article 26. Compliance with peremptory norms*

Nothing in this Chapter precludes the wrongfulness of any act of an international organization which is not in conformity with an obligation arising under a peremptory norm of general international law.

*Article 27. Consequences of invoking a circumstance precluding wrongfulness*

The invocation of a circumstance precluding wrongfulness in accordance with this Chapter is without prejudice to:

- (a) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;
- (b) the question of compensation for any material loss caused by the act in question.

**PART THREE. CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION****Chapter I. General principles***Article 28. Legal consequences of an internationally wrongful act*

The international responsibility of an international organization which is entailed by an internationally wrongful act in accordance with the provisions of Part Two involves legal consequences as set out in this Part.

*Article 29. Continued duty of performance*

The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible international organization to perform the obligation breached.

*Article 30. Cessation and non-repetition*

The international organization responsible for the internationally wrongful act is under an obligation:

- (a) to cease that act, if it is continuing;
- (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

*Article 31. Reparation*

1. The responsible international organization is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of an international organization.

*Article 32. Relevance of the rules of the organization*

1. The responsible international organization may not rely on its rules as justification for failure to comply with its obligations under this Part.
2. Paragraph 1 is without prejudice to the applicability of the rules of an international organization to the relations between the organization and its member States and organizations.

*Article 33. Scope of international obligations set out in this Part*

1. The obligations of the responsible international organization set out in this Part may be owed to one or more States, to one or more other organizations, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.
2. This Part is without prejudice to any right, arising from the international responsibility of an international organization, which may accrue directly to any person or entity other than a State or an international organization.

## Chapter II. Reparation for injury

*Article 34. Forms of reparation*

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this Chapter.

*Article 35. Restitution*

An international organization responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) is not materially impossible;

- (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

*Article 36. Compensation*

1. The international organization responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

*Article 37. Satisfaction*

1. The international organization responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.
2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.
3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible international organization.

*Article 38. Interest*

1. Interest on any principal sum due under this Chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.
2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

*Article 39. Contribution to the injury*

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or international organization or of any person or entity in relation to whom reparation is sought.

*Article 40. Ensuring the fulfilment of the obligation to make reparation*

1. The responsible international organization shall take all appropriate measures in accordance with its rules to ensure that its members

provide it with the means for effectively fulfilling its obligations under this Chapter.

2. The members of a responsible international organization shall take all the appropriate measures that may be required by the rules of the organization in order to enable the organization to fulfil its obligations under this Chapter.

Chapter III. Serious breaches of obligations under peremptory norms of general international law

*Article 41. Application of this Chapter*

1. This Chapter applies to the international responsibility which is entailed by a serious breach by an international organization of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible international organization to fulfil the obligation.

*Article 42. Particular consequences of a serious breach of an obligation under this Chapter*

1. States and international organizations shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 41.

2. No State or international organization shall recognize as lawful a situation created by a serious breach within the meaning of article 41, nor render aid or assistance in maintaining that situation.

3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this Chapter applies may entail under international law.

PART FOUR. THE IMPLEMENTATION OF THE INTERNATIONAL  
RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATION

Chapter I. Invocation of the responsibility of an international organization

*Article 43. Invocation of responsibility by an injured State or international organization*

A State or an international organization is entitled as an injured State or an injured international organization to invoke the responsibility of another international organization if the obligation breached is owed to:

- (a) that State or the former international organization individually;
- (b) a group of States or international organizations including that State or the former international organization, or the international community as a whole, and the breach of the obligation:
  - (i) specially affects that State or that international organization; or
  - (ii) is of such a character as radically to change the position of all the other States and international organizations to which the obligation is owed with respect to the further performance of the obligation.

*Article 44. Notice of claim by an injured State or international organization*

- 1. An injured State or international organization which invokes the responsibility of another international organization shall give notice of its claim to that organization.
- 2. The injured State or international organization may specify in particular:
  - (a) the conduct that the responsible international organization should take in order to cease the wrongful act, if it is continuing;
  - (b) what form reparation should take in accordance with the provisions of Part Three.

*Article 45. Admissibility of claims*

- 1. An injured State may not invoke the responsibility of an international organization if the claim is not brought in accordance with any applicable rule relating to the nationality of claims.
- 2. When the rule of exhaustion of local remedies applies to a claim, an injured State or international organization may not invoke the responsibility of another international organization if any available and effective remedy has not been exhausted.

*Article 46. Loss of the right to invoke responsibility*

The responsibility of an international organization may not be invoked if:

- (a) the injured State or international organization has validly waived the claim;

(b) the injured State or international organization is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

*Article 47. Plurality of injured States or international organizations*

Where several States or international organizations are injured by the same internationally wrongful act of an international organization, each injured State or international organization may separately invoke the responsibility of the international organization for the internationally wrongful act.

*Article 48. Responsibility of an international organization and one or more States or international organizations*

1. Where an international organization and one or more States or other international organizations are responsible for the same internationally wrongful act, the responsibility of each State or organization may be invoked in relation to that act.

2. Subsidiary responsibility may be invoked insofar as the invocation of the primary responsibility has not led to reparation.

3. Paragraphs 1 and 2:

(a) do not permit any injured State or international organization to recover, by way of compensation, more than the damage it has suffered;

(b) are without prejudice to any right of recourse that the State or international organization providing reparation may have against the other responsible States or international organizations.

*Article 49. Invocation of responsibility by a State or an international organization other than an injured State or international organization*

1. A State or an international organization other than an injured State or international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to a group of States or international organizations, including the State or organization that invokes responsibility, and is established for the protection of a collective interest of the group.

2. A State other than an injured State is entitled to invoke the responsibility of an international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole.

3. An international organization other than an injured international organization is entitled to invoke the responsibility of another international organization in accordance with paragraph 4 if the obligation breached is owed to the international community as a whole and safeguarding the interest of the international community as a whole underlying the obligation breached is within the functions of the international organization invoking responsibility.

4. A State or an international organization entitled to invoke responsibility under paragraphs 1 to 3 may claim from the responsible international organization:

(a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and

(b) performance of the obligation of reparation in accordance with Part Three, in the interest of the injured State or international organization or of the beneficiaries of the obligation breached.

5. The requirements for the invocation of responsibility by an injured State or international organization under articles 44, 45, paragraph 2, and 46 apply to an invocation of responsibility by a State or international organization entitled to do so under paragraphs 1 to 4.

#### *Article 50. Scope of this Chapter*

This Chapter is without prejudice to the entitlement that a person or entity other than a State or an international organization may have to invoke the international responsibility of an international organization.

### Chapter II. Countermeasures

#### *Article 51. Object and limits of countermeasures*

1. An injured State or an injured international organization may only take countermeasures against an international organization which is responsible for an internationally wrongful act in order to induce that organization to comply with its obligations under Part Three.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State or international organization taking the measures towards the responsible international organization.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

4. Countermeasures shall, as far as possible, be taken in such a way as to limit their effects on the exercise by the responsible international organization of its functions.

*Article 52. Conditions for taking countermeasures by members of an international organization*

1. Subject to paragraph 2, an injured State or international organization which is a member of a responsible international organization may not take countermeasures against that organization unless:

- (a) the conditions referred to in article 51 are met;
  - (b) the countermeasures are not inconsistent with the rules of the organization; and
  - (c) no appropriate means are available for otherwise inducing compliance with the obligations of the responsible international organization concerning cessation of the breach and reparation.
2. Countermeasures may not be taken by an injured State or international organization which is a member of a responsible international organization against that organization in response to a breach of an international obligation under the rules of the organization unless such countermeasures are provided for by those rules.

*Article 53. Obligations not affected by countermeasures*

- 1. Countermeasures shall not affect:
  - (a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;
  - (b) obligations for the protection of human rights;
  - (c) obligations of a humanitarian character prohibiting reprisals;
  - (d) other obligations under peremptory norms of general international law.
- 2. An injured State or international organization taking countermeasures is not relieved from fulfilling its obligations:
  - (a) under any dispute settlement procedure applicable between it and the responsible international organization;
  - (b) to respect any inviolability of organs or agents of the responsible international organization and of the premises, archives and documents of that organization.

*Article 54. Proportionality of countermeasures*

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

*Article 55. Conditions relating to resort to countermeasures*

1. Before taking countermeasures, an injured State or international organization shall:

(a) call upon the responsible international organization, in accordance with article 44, to fulfil its obligations under Part Three;

(b) notify the responsible international organization of any decision to take countermeasures and offer to negotiate with that organization.

2. Notwithstanding paragraph 1 (b), the injured State or international organization may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:

(a) the internationally wrongful act has ceased; and

(b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible international organization fails to implement the dispute settlement procedures in good faith.

*Article 56. Termination of countermeasures*

Countermeasures shall be terminated as soon as the responsible international organization has complied with its obligations under Part Three in relation to the internationally wrongful act.

*Article 57. Measures taken by States or international organizations other than an injured State or organization*

This Chapter does not prejudice the right of any State or international organization, entitled under article 49, paragraphs 1 to 3, to invoke the responsibility of another international organization, to take lawful measures against that organization to ensure cessation of the breach and reparation in the interest of the injured State or organization or of the beneficiaries of the obligation breached.

PART FIVE. RESPONSIBILITY OF A STATE IN CONNECTION WITH THE CONDUCT OF AN INTERNATIONAL ORGANIZATION

*Article 58. Aid or assistance by a State in the commission of an internationally wrongful act by an international organization*

1. A State which aids or assists an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this article.

*Article 59. Direction and control exercised by a State over the commission of an internationally wrongful act by an international organization*

1. A State which directs and controls an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(a) the State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.

2. An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the terms of this article.

*Article 60. Coercion of an international organization by a State*

A State which coerces an international organization to commit an act is internationally responsible for that act if:

(a) the act would, but for the coercion, be an internationally wrongful act of the coerced international organization; and

(b) the coercing State does so with knowledge of the circumstances of the act.

*Article 61. Circumvention of international obligations of a State member of an international organization*

1. A State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject-matter of one of the State's international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation.
2. Paragraph 1 applies whether or not the act in question is internationally wrongful for the international organization.

*Article 62. Responsibility of a State member of an international organization for an internationally wrongful act of that organization*

1. A State member of an international organization is responsible for an internationally wrongful act of that organization if:
  - (a) it has accepted responsibility for that act towards the injured party; or
  - (b) it has led the injured party to rely on its responsibility.
2. Any international responsibility of a State under paragraph 1 is presumed to be subsidiary.

*Article 63. Effect of this Part*

This Part is without prejudice to the international responsibility of the international organization which commits the act in question, or of any State or other international organization.

## PART SIX. GENERAL PROVISIONS

*Article 64. Lex specialis*

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of an international organization, or of a State in connection with the conduct of an international organization, are governed by special rules of international law. Such special rules of international law may be contained in the rules of the organization applicable to the relations between an international organization and its members.

*Article 65. Questions of international responsibility not regulated by these articles*

The applicable rules of international law continue to govern questions concerning the responsibility of an international organization or a State for an internationally wrongful act to the extent that they are not regulated by these articles.

*Article 66. Individual responsibility*

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of an international organization or a State.

*Article 67. Charter of the United Nations*

These articles are without prejudice to the Charter of the United Nations.

**19. ARTICLES ON THE EFFECTS OF ARMED CONFLICTS ON TREATIES\***

**PART ONE. SCOPE AND DEFINITIONS**

*Article 1. Scope*

The present articles apply to the effects of armed conflict on the relations of States under a treaty.

*Article 2. Definitions*

For the purposes of the present articles:

(a) “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation, and includes treaties between States to which international organizations are also parties;

(b) “armed conflict” means a situation in which there is resort to armed force between States or protracted resort to armed force between governmental authorities and organized armed groups.

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\* Text adopted by the Commission at its sixty-third session, in 2011, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session. The report, which also contains commentaries on the draft articles as adopted by the Commission, appears in *Official Records of the General Assembly, Sixty-sixth session, Supplement No. 10* (A/66/10 and Add.1). Text reproduced as it appears in the annex to General Assembly resolution 66/99 of 9 December 2011.

## PART TWO. PRINCIPLES

### Chapter I. Operation of treaties in the event of armed conflicts

#### *Article 3. General principle*

The existence of an armed conflict does not *ipso facto* terminate or suspend the operation of treaties:

- (a) as between States parties to the conflict;
- (b) as between a State party to the conflict and a State that is not.

#### *Article 4. Provisions on the operation of treaties*

Where a treaty itself contains provisions on its operation in situations of armed conflict, those provisions shall apply.

#### *Article 5. Application of rules on treaty interpretation*

The rules of international law on treaty interpretation shall be applied to establish whether a treaty is susceptible to termination, withdrawal or suspension in the event of an armed conflict.

#### *Article 6. Factors indicating whether a treaty is susceptible to termination, withdrawal or suspension*

In order to ascertain whether a treaty is susceptible to termination, withdrawal or suspension in the event of an armed conflict, regard shall be had to all relevant factors, including:

- (a) the nature of the treaty, in particular its subject-matter, its object and purpose, its content and the number of parties to the treaty; and
- (b) the characteristics of the armed conflict, such as its territorial extent, its scale and intensity, its duration and, in the case of non-international armed conflict, also the degree of outside involvement.

#### *Article 7. Continued operation of treaties resulting from their subject-matter*

An indicative list of treaties the subject-matter of which involves an implication that they continue in operation, in whole or in part, during armed conflict, is to be found in the annex to the present articles.

## Chapter II. Other provisions relevant to the operation of treaties

### *Article 8. Conclusion of treaties during armed conflict*

1. The existence of an armed conflict does not affect the capacity of a State party to that conflict to conclude treaties in accordance with international law.
2. States may conclude agreements involving termination or suspension of a treaty or part of a treaty that is operative between them during situations of armed conflict, or may agree to amend or modify the treaty.

### *Article 9. Notification of intention to terminate or withdraw from a treaty or to suspend its operation*

1. A State intending to terminate or withdraw from a treaty to which it is a Party, or to suspend the operation of that treaty, as a consequence of an armed conflict shall notify the other State Party or States Parties to the treaty, or its depositary, of such intention.
2. The notification takes effect upon receipt by the other State Party or States Parties, unless it provides for a subsequent date.
3. Nothing in the preceding paragraphs shall affect the right of a Party to object within a reasonable time, in accordance with the terms of the treaty or other applicable rules of international law, to the termination of or withdrawal from the treaty, or suspension of its operation.
4. If an objection has been raised in accordance with paragraph 3, the States concerned shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.
5. Nothing in the preceding paragraphs shall affect the rights or obligations of States with regard to the settlement of disputes insofar as they have remained applicable.

### *Article 10. Obligations imposed by international law independently of a treaty*

The termination of or the withdrawal from a treaty, or the suspension of its operation, as a consequence of an armed conflict, shall not impair in any way the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of that treaty.

### *Article 11. Separability of treaty provisions*

Termination, withdrawal from or suspension of the operation of a treaty as a consequence of an armed conflict shall, unless the treaty oth-

erwise provides or the Parties otherwise agree, take effect with respect to the whole treaty except where:

- (a) the treaty contains clauses that are separable from the remainder of the treaty with regard to their application;
- (b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other Party or Parties to be bound by the treaty as a whole; and
- (c) continued performance of the remainder of the treaty would not be unjust.

*Article 12. Loss of the right to terminate or withdraw from a treaty or to suspend its operation*

A State may no longer terminate or withdraw from a treaty or suspend its operation as a consequence of an armed conflict if, after becoming aware of the facts:

- (a) it shall have expressly agreed that the treaty remains in force or continues in operation; or
- (b) it must by reason of its conduct be considered as having acquiesced in the continued operation of the treaty or in its maintenance in force.

*Article 13. Revival or resumption of treaty relations subsequent to an armed conflict*

1. Subsequent to an armed conflict, the States Parties may regulate, on the basis of agreement, the revival of treaties terminated or suspended as a consequence of the armed conflict.

2. The resumption of the operation of a treaty suspended as a consequence of an armed conflict shall be determined in accordance with the factors referred to in article 6.

### PART THREE. MISCELLANEOUS

*Article 14. Effect of the exercise of the right to self-defence on a treaty*

A State exercising its inherent right of individual or collective self-defence in accordance with the Charter of the United Nations is entitled to suspend in whole or in part the operation of a treaty to which it is a Party insofar as that operation is incompatible with the exercise of that right.

*Article 15. Prohibition of benefit to an aggressor State*

A State committing aggression within the meaning of the Charter of the United Nations and resolution 3314 (XXIX) of the General Assembly of the United Nations shall not terminate or withdraw from a treaty or suspend its operation as a consequence of an armed conflict that results from the act of aggression if the effect would be to the benefit of that State.

*Article 16. Decisions of the Security Council*

The present articles are without prejudice to relevant decisions taken by the Security Council in accordance with the Charter of the United Nations.

*Article 17. Rights and duties arising from the laws of neutrality*

The present articles are without prejudice to the rights and duties of States arising from the laws of neutrality.

*Article 18. Other cases of termination, withdrawal or suspension*

The present articles are without prejudice to the termination, withdrawal or suspension of treaties as a consequence of, *inter alia*: (a) a material breach; (b) supervening impossibility of performance; or (c) a fundamental change of circumstances.

## ANNEX. INDICATIVE LIST OF TREATIES REFERRED TO IN ARTICLE 7

- (a) Treaties on the law of armed conflict, including treaties on international humanitarian law;
- (b) Treaties declaring, creating or regulating a permanent regime or status or related permanent rights, including treaties establishing or modifying land and maritime boundaries;
- (c) Multilateral law-making treaties;
- (d) Treaties on international criminal justice;
- (e) Treaties of friendship, commerce and navigation and agreements concerning private rights;
- (f) Treaties for the international protection of human rights;
- (g) Treaties relating to the international protection of the environment;
- (h) Treaties relating to international watercourses and related installations and facilities;

- (i) Treaties relating to aquifers and related installations and facilities;
- (j) Treaties which are constituent instruments of international organizations;
- (k) Treaties relating to the international settlement of disputes by peaceful means, including resort to conciliation, mediation, arbitration and judicial settlement;
- (l) Treaties relating to diplomatic and consular relations.